THE COMPLEAT

CHANCERY-PRACTISER:

OR, THE

Whole Proceedings and Practice of the High Court of *Chancery*, in a perfect NEW Manner.

CONTAINING,

The Original, Extent and Authority of that High and Honourable Court, with the *Rules* and *Methods* of PRACTICE therein, as well in the *Petty-Bag-Office* according to the Common Law, as in all *Suits in Equity*, from the Bill in Chancery to the Decree in the Cauſe.

AND ALSO

PRECEDENTS of Bills, Anſwers, Pleas and Demurrers, Replications, Rejoinders, Interrogatories and Depoſitions of Witneſſes, Decrees, *&c.* And of Affidavits, Petitions, Reports, Orders, Injunctions, Writs and Proceſſes in all Caſes.

Together with

Bills of *Review* and to *Reverſe* Decrees, and *Appeals* from Decrees of the Chancery to the Lords in Parliament.

LIKEWISE

Extraordinary adjudg'd *Caſes*, ſhewing wherein Relief may be given in *Equity*, *&c.*

Of the greateſt Uſe to all Gentlemen at the Bar, Attornies and Solicitors, and Officers and Clerks of the Court of Chancery.

VOL. I.

In the *SAVOY*: Printed by E. and R. NUTT, and R. GOSLING (Aſſigns of *Edw. Sayer*, Eſq;) for J. Hooke at the *Flower-de-luce*, J. Shuckburgh at the *Sun*, L. Gilliver at *Homer's Head* in *Fleetſtreet*, and T. Osborne in *Grays-Inn*. MDCC XXX.

FH
MVSEVM
BRITANNICVM

To the RIGHT HONOURABLE

Sir *JOSEPH JEKYL*, Kt.

Maſter of the Rolls.

Honourable SIR,

THE Practice of the High Court of Chancery has been treated of, tho' immethodically and imperfectly, by various Writers, and is of the greateſt Importance in the

Diſtribution of Juſtice; and it is therefore this Treatiſe, intended to ſupply the Defects of the Others on the Subject, is now dedicated to your Honour, and as You are One of the Judges of the Court of Chancery, advanc'd to that Station as well for your great Abilities as your uncommon Integrity.

Your Fame and Reputation in both Ways, ſprung up and rais'd by natural Endowments, Education and Induſtry, and from the great Example of your excellent Relation the *Lord Keeper* SOMERS, thro' whoſe juſt Regard to Merit you were early

early diſtinguiſh'd as his Lordſhip's Favourite, have long ſince attracted ſome Envy to your Perſon, and ſpirited up a Kind of Oppoſition to your Exerciſe of your High Office: But it hath been no ſmall Satisfaction to You, Sir, to find Cauſes of the greateſt Weight and Conſequence brought to your Judgment, at the ſame Time that Attempts have been made to deveſt You of Part of your Judicial Power.

And however what I have now mentioned, may be conſtrued in an Addreſs to your Honour, this I will preſume to ſay farther; That Uni-

Universal Learning, great Wisdom and Penetration, Fidelity and Integrity, Modesty, Candor and Humanity, are Virtues and Excellencies inseparable from your Honour, and must of Consequence endear You to all Sorts and Degrees of Persons.

I am,

Honourable SIR,

Your Honour's

Most Obedient and most

Devoted Humble Servant,

G. J.

THE PREFACE.

I Was ever of Opinion that there was a Neceſſity to new write *and* methodize *moſt of the general Books of Practice in the Law and in Equity, on conſidering the great and manifeſt Defects which are apparent in the Works that have been publiſhed concerning them; and I have now endeavour'd to execute my original Intention of compiling anew thoſe Treatiſes moſt wanted, beginning with the higheſt Court of Judicature next to the Parliament, and not doubting of Succeſs herein by the fair Room left me for Improvement.*

There are many Paths to Learning and Knowledge, in all Arts and upon all Subjects, and happy is that Perſon who finds out the plaineſt and eaſieſt Road to them. On the great Subject of Law-Knowledge, that of the High and Honourable Court of Chancery, our Writers have been exceedingly negligent in the Courſe they have purſued: It muſt certainly be confeſs'd, that in the moſt modern Books on this Head, beſides many material things that are wanting,

there

there is great Perplexity, Confuſion and Tautology; and all the old Practice is every where intermix'd with new Proceedings, ſo that Attornies and other Practiſers are greatly at a Loſs which to follow, and oftentimes fatally miſguided.

In this Work, I have beſtow'd the utmoſt Pains to make every Thing relating to the preſent Practice of the Court of Chancery plain and eaſy, in a Method *yet perfectly* NEW, *and to inſert whatever might be neceſſary, but nothing ſuperfluous illuſtrating the ſame. The Directions for Practice, are taken from and ſupported by the Orders of Court, and Reports of adjudg'd Caſes in Chancery, with ſuch Laws and Statutes that from Time to Time have been made and enacted; and under* Caſes, *I have inſerted ſuch Judgments and Determinations as ſhew wherein Relief may be given in Equity, &c. from the ſeveral Volumes of* Chancery Reports *ſome Time ſince publiſh'd, and alſo* Finch's Caſes, *and* Vernon's Reports: *And the* PRECEDENTS *interſpers'd, conſiſting of the greateſt Variety, are entirely applicable thereto, and many of which no where elſe in Print, being ſelected from the* Papers *of a very eminent Practiſer lately deceaſed.*

In Fine, the many Omiſſions and Defects of all the other Books on this Subject are ſupply'd in the following Sheets, where the Reader will not fail to meet with what he may expect to find, viz. *Profit and Inſtruction.*

THE

THE COMPLEAT

Chancery-Practiſer:

OR, THE

Whole Proceedings and Practice of the High Court of *Chancery.*

Of the High Court of Chancery, its Original, Juriſdiction, and Authority.

THE Court of Chancery is the higheſt Court of Judicature in this Kingdom next to the Parliament; and as it is a Court of Equity proceeds *ſecundum æquum & bonum*, and not according to the Rules and Order of Law.

In the Time of the *Saxons*, the King himſelf held a high Court of Judicature, wherein he ſat in Perſon, and did judge not only according to Law, but alſo according to *Equity*; and it appears by the Laws of K. *Edgar*, that

there was a Power by Law veſted in the King, to moderate the *Summum jus*, according to Equity and Good Conſcience: And as Petitions or Appeals for moderating the Rigour of the Law multiplied, the Prince was obliged to depute a Subſtitute or Chancellor, who at firſt became a Judge to hear and determine ſuch Petitions; and in the End People entitled their Suits to him, he having a certain fix'd Place in the King's Houſe appointed for his Office, where Suitors attended, which Office was converted into a *Court of Chancery*. Leg. Edg. c. 7.

It is indeed ſaid by *Camden* and others, that this Court was not originally veſted with any judicial Power; and that it was inſtituted by K. *Will.* 1. called the Conqueror, only as a College of Scribes or Clerks to form the King's Writs, Patents and Commiſſions, and to regiſter or inrol them in their Office, over whom was the *Cuſtos ſigilli*, Chancellor or Keeper of the Seal, who was to examine the ſame, and if allow'd, to ſeal them with the King's Seal: And therefore the Meaning of that Saying in the 4 *H.* 7. *Quod nullus recedat à Curia Cancellariæ ſine Remedio*, muſt be, that every Perſon upon Complaint made, may have a Writ remedial out of the Chancery returnable in other Courts, and not that the Chancellor ſhould be a Judge of ſuch Caſes; for ſay theſe Writers, at firſt there were no *Writs of Grace*, but all Writs were *remedial*, and due *ex debito Juſtitiæ*, and which the Chancellors or Keepers were by their Oath, and the Duty of their Office, required to iſſue. *Pref. 9 Rep. Camd. Britan.* 80.

Some

Some have been of Opinion, that the Court of Chancery was not originally intended to take Cognizance of Matters of Equity; but only to ſeal and inrol the King's Grants, Patents and Commiſſions, and to iſſue out in his Name (he being the Fountain of Juſtice) Writs remedial to his Subjects, for the Recovery of Rights, and Remedying of Grievances: But that afterwards to mitigate the Severity of the Common Law, it was thought neceſſary to add thereunto a Power to determine Cauſes according to Equity and Conſcience. The Chancery in our old Books is called *Officina Brevium Originalium & Remedialium*; and the Lord *Chancellor Egerton* calleth the Chancery *Officina Juſtitiæ & Æquitatis*, where all original Writs (which in antient Times were the Grounds of all Suits) were deviſed and framed.

The *Civilians* labour to prove, That this Court had its Original from them; alledging for Argument, that the Chancery muſt neceſſarily be the moſt antient Court of this Realm, becauſe from thence all original Writs and Commiſſions do come, upon which the Courts of Common Law found their Proceedings: This Court they infer from hence, in Time and Nature was the Firſt; and could not have its Riſe, or receive Influence from any other Court of Law within this Kingdom, but from ſome other Court elſewhere, of greater Antiquity than the Common Law within this Realm: Beſides, *Cancellarius* and *Cancellaria* are *Latin* Words found to have been uſed in the Civil Law, before the Common Law of

England had its Being; *Cancellarius* then ſignifying ſuch an Aſſiſtant to the Sovereign Prince, as for his Wiſdom and Knowledge in the Laws was join'd unto him. Dr. *Couſen's Treat. Civ. Law*, 3. 52.

But in the Reign of K. *Hen.* 6. Sir *John Forteſcue*, Chancellor to Prince *Henry* ſaith, That in all the Times of the ſeveral Nations that reigned here, *viz.* The *Romans*, *Saxons*, *Danes*, and *Normans*, this Realm was ſtill ruled with the ſame Cuſtoms it is now govern'd withal; nor are the *Roman Civil Laws*, by ſo long Continuance of antient Time, confirmed here. To the ſame Effect Sir *Edw. Coke* expreſſeth himſelf; who ſaith alſo, the Court of Chancery hath been beyond Time of Memory: And *Anno* 9 *Ed.* 4. all the Judges of *England* did affirm, that the Chancery was the King's Court, and had been Time out of Mind; ſo that it was impoſſible to trace its Original.

All Kingdoms in their Conſtitution, are with the Power of Juſtice; and as the Laws of *England* are the Birthright and Inheritance of all the Subjects of *England*, ſo the Courts of Juſtice at *Weſtminſter* are the main Chanel thro' which the Benefit of theſe Laws is convey'd to them: They are fundamental Courts, as antient as the Kingdom it ſelf, and known to the Law; the Court of Chancery, as well as the other Courts at *Weſtminſter*, is a fundamental Court; and there is no Statute nor written Law that theſe Courts ſhould be, but the Ground and Beginning of them depend upon the Cuſtom of the Kingdom; which Cuſtom is of ſo high Authority

rity, that neither thoſe Courts, nor their Authorities, may be alter'd without the Parliament. *Doct. & Stud. c.* 7. *Hob. Rep.* 63.

As to the Riſe and Progreſs of the Court of Equity in Chancery, which by ſome Writers is ſaid not to be immemorial as the Law-ſide is, this Account hath been given: The Adminiſtration of Juſtice in this Realm being the Prerogative of the King, who was ſworn at his Coronation, to deliver to his Subjects *Æquam & Rectam Juſtitiam*; this was not poſſible for him to do in Perſon, therefore of Neceſſity he delegated it by ſeveral Portions to Miniſters and Officers, whom he circumſcribed within the Limits of poſitive Laws; whence by Degrees ſtanding Courts of Juſtice were form'd, who in the King's Name, and by his Authority, diſpenſed Juſtice to the People, according to an eſtabliſh'd Law and Order: But in as much as poſitive Laws conſiſt of general Inſtitutions, there were of Neceſſity Variety of particular Caſes ſtill happening, wherein no proper or adequate Remedy could be given by the ordinary Courts proceeding according to poſitive Law; and many Times the Rigour of the Law might in particular Caſes be Oppreſſion and Injuſtice: Therefore to ſupply the Want, and correct the Rigour of the poſitive eſtabliſh'd Law, Recourſe was had to the King, to obtain Relief in ſuch Caſes, and in ſuch Manner as ſhould appear to him to be juſt and equitable. *Bract.* 108. *Maddox Hiſt. Excheq.* 61.

And the Method of Application for Relief was by Bills or Petitions to the King, ſometimes

in Parliament and ſometimes out of Parliament, commonly directed to him and his Council: When a Parliament met, there were uſually Petitions of all Kinds preferr'd to the King; and the diſtinguiſhing of theſe Petitions, and giving proper Anſwers to them, occaſioned a great Weight of Buſineſs, eſpecially when the Parliaments ſat but a few Days; and to Remedy it, an *Ordinance* was made 8 *Ed.* 1. wherein it is recited, That the People who came to Parliament, were often delay'd and diſturb'd, to the great Grievance of them and of the Court, by the Multitude of Petitions laid before the King, the greateſt Part whereof might be diſpatch'd by the Chancellor and Juſtices; and therefore it is provided, that all the Petitions which concern the Seal, ſhall come firſt to the Chancellor; and thoſe which touch the Exchequer, to the Exchequer; and thoſe which concern the Juſtices and the Law of the Land, to the Juſtices, *&c.* And if the Affairs are ſo great, that the Chancellor and others cannot determine them without the King, then they ſhall bring them before the King to know his Pleaſure; ſo that no Petitions ſhall come before the King and his Council, but by the Hands of the Chancellor and other Chief Miniſters, and ſo as the King and his Council may, without the Load of other Buſineſs, attend the great Buſineſs of the Realm, *&c.* and a ſubſequent Regulation was made, for the Sorting of theſe Petitions into ſeveral Bundles, *Anno* 21 *Ed.* 1. *Ryley's Placit. Parl.* 442.

But

But in the Time of King *Edw.* 1. *Matters of Grace* were only determinable by the King, or by ſuch as he appointed, and not in any form'd or eſtabliſh'd Court of Equity; and the Statute *Anno* 28. of the ſame King, which enacts, that the Chancellor, and Juſtices of the King's Bench, ſhall follow the King, that he may have always near him wiſe Men in the Law, able duly to order all ſuch Matters as ſhall come unto the Court, at all Times when need ſhall be, doth not ſuppoſe that the Chancellor at that Time held a Court of Equity, or that he attended on the King to decide Matters in Equity. 2 *Inſt.* 552.

It doth not appear by any Records that there was a Court of Equity in Chancery in the Time of K. *Ed.* 2. But it is ſaid, that the Equity-ſide of the Court of Chancery began in the Time of K. *Edw.* 3. The Chancellor had no Cauſes pleaded before him till the Reign of *Ed.* 3. And there are no Decrees to be found in Chancery before 20 *H.* 6. *Brady's Hiſt. Engl.* 153. 1 *Lev. Rep.* 241.

According to *Lambard*, when the Courts of Chancery and King's Bench ceas'd to be ambulatory, and became ſettled Courts in a certain Place, which was the 4 *Ed.* 3. Then the King committed to his Chancellor, with the Charge of the Great Seal, his only legal, abſolute and extraordinary Pre-eminence of Juriſdiction, in Civil Cauſes, as well for Amendment as for Supply of the Common Law; tho' he ſaith, that there is not any frequent Mention of Cauſes drawn up before the Chancellor

for Help in Equity, but only from the Time of K. *Hen.* 4. in whoſe Reign, by Reaſon of inteſtine Troubles, Feoffments to Uſes did either firſt begin, or elſe did grow common and familiar; for Remedy in which Caſes of Uſes, the Court of Chancery was then fled unto as the only Altar of Help and Refuge. *Lamb. Archaion.* 62, 67. *Dugd.* 37.

The Parliament Roll 14 *Ed.* 3. N° 33. takes Notice, that there was an Ordinance touching the *Priory of Weſt Shirbourne, &c.* And that if any thing ſhould be done contrary to this Ordinance, the Chancellor of *England* ſhould have Power to hear the *Complaint by Bill*, and upon this to proceed in the ſame Manner as is accuſtomed to be done in a Writ of *Subpœna* in Chancery. 1 *Roll. Abr.* 372. But it has been obſerv'd, that the moſt probable Time when the Chancellor's Juriſdiction of Equity came to an Eſtabliſhment, is the 22 *Ed.* 3. and that then probably it took its authoritative Commencement from the Writ or Proclamation to the Sheriffs of *London*, which was as follows, *viz.*

The King to the Sheriffs of London, *Greeting.*

'FOraſmuch as we are greatly and daily 'buſied in various Affairs concerning us 'and the State of our Realm of *England:* We 'will, that all Buſineſs and Matters of Special 'Grace cognizable before us, from henceforth 'be proſecuted before the Archbiſhop of *Canterbury* our Chancellor, or our well beloved 'Clerk

'Clerk the Keeper of the Privy Seal, ſo as 'they or one of them tranſmit to us ſuch Pe-'titions of Buſineſs, which without conſulting 'us they cannot determine, together with their 'Advice thereupon, without any farther Proſe-'cution to be had before us for the ſame; 'that upon Inſpection thereof, we may further 'ſignify to the aforeſaid Chancellor or Keeper 'our Will and Pleaſure therein; and that none 'other do for the Future purſue ſuch Kind of 'Buſineſs before us, we command you upon 'Sight hereof to make *Proclamation* of the 'Premiſſes, &c. *Legal. Judicat. in Chanc.* 30, '31.'

This Referring Matters of Grace to the Chancellor, ſeems to have laid the Foundation of Equity in the *Court of Chancery*; as the Reference to the Keeper of the Privy Seal did probably lay the Foundation of that Court, which was afterwards called the *Court of Requeſts*. That the Chancellor did from this Time, or in the Time of *Ed.* 3. exerciſe a Juriſdiction in Matters of Equity, is evident from the Parliament Rolls in that Reign, and in the Beginning of the following, *i. e.* of *R.* 2. for then Complaints were made in Parliament of the Exerciſe of this Power to the Subverſion of the Common Law.

In the 7 *R.* 2. the Commons pray'd, that at the Suit of the Party, on any Suggeſtions, none of the King's Subjects be made to come by Writs, *quibuſdam certis de Cauſis*, or any other ſuch Writs before the Chancellor, or the King's Council, to anſwer in any Matter where Reco-

Recovery is to be had by Common Law; except in Writs of *Scire facias* grounded on Common Law or Statute, on Pain of One Hundred Pounds.

And the 13 *R.* 2. the Commons pray, that neither the Chancellor nor the King's Council, after the Parliament ended, may make any Ordinance againſt the Common Law, or ancient Cuſtoms of the Realm, or Statutes made in Parliament, but that the Common Law run to all the People univerſally. Yet I do not find, that the Commons got any thing by their Petitions; beſides an Act of Parliament 13 *R.* 2. *c.* 6. which recites that the People were compelled to come before the King's Council, or in the Chancery, by Writs grounded on untrue Suggeſtions, Enacts, that the Chancellor for the Time being, preſently after ſuch Suggeſtions are duly found and proved untrue, ſhall have Power to award and ordain Damages according to his Diſcretion, to him which is ſo unduly troubled.

Tho' by the Stat. 4 *H.* 4. *c.* 22. reciting, that whereas in Pleas real as well as perſonal, after Judgments given in the King's Courts, the Parties be made to come, upon grievous Pain, *i. e.* by *Subpœna*, to make new Anſwers thereunto, to the great Annoyance of the Parties, and in Subverſion of the Common Law; It is ordain'd, that after Judgments be given in the King's Courts, the Parties and their Heirs ſhall be thereof quiet until the Judgment is avoided by Attaint or Error, if there be any Error, as it hath been uſed by the Law in the Time of the King's Progenitors. The Book, called *Doctor*

and

and Student, hath the following Obſervation and Inference on this Statute: There is a Statute made 4 *H.* 4. (ſays this Author) whereby it is enacted, That Judgments given in the King's Courts, ſhall not be examined in the Chancery, Parliament, nor elſewhere; which Statute is not againſt Conſcience: For if ſuch Judgments ſhould be examined in the Chancery, or in any other Place, the Plaintiffs would ſeldom come to the Effect of their Suits, and the Law would never have End; to prevent which Inconvenience, the Statute was made. *Dr. and Stud. lib.* 1. *c.* 18. But *vide poſtea*, pag. 13.

The 15 *H.* 6. *c.* 4. Enacts, that whereas divers Perſons have been greatly grieved by Writs of *Subpœna* purchas'd for Matters determinable by the Common Law of the Land, to the great Damage of ſuch Perſons ſo vexed, and the Subverſion and Impediment of the Common Law; the King wills that the Statutes thereof ſhall be kept according to the Effect of the ſame, and that no Writ of *Subpœna* be granted, till Surety be found to ſatisfy the Party ſo grieved and vexed for his Damages and Expences, if ſo be that the Matter cannot be made good which is contained in the Bill. This Statute ſeems to be made in Aid and Purſuance of the 13 *R.* 2. *c.* 6.

In the Reigns of K. *H.* 4. *H.* 5. and *H.* 6. ſeveral Efforts were made and renewed by the Commons in Parliament againſt the growing Power of Courts of Equity, and eſpecially of the Chancery, as by the Parliament Rolls appears; but at length it hath been obſerv'd it got the better of all Oppoſition, and not any Inſtances

ces were made againſt it by the Commons after the 1*ſt* of *H.* 6. but on the contrary, what was done by the Parliament in the firſt Year of this Reign, confirm'd and eſtabliſh'd that Power. For *Henry* the 6*th* being then a Minor, *Thomas Biſhop of Durham* was made Chancellor, by the Advice and Aſſent of Parliament; and thereon a Patent was made to him of the Office of Chancellor, whereby the King by Aſſent of Parliament, grants to him all and all manner of Authority and Power, to do and execute *Vice, Nomine & loco noſtris*, in the King's Stead, Name and Place, all and every Thing and Things which by Law or Cuſtom belong to the Office of Chancellor of *England*, or at any Time have accuſtomed to belong thereunto, with a Command to all his Subjects to obey and aſſiſt the Chancellor in all Things in the Exerciſe of his ſaid Office.

From this Time the Juriſdiction of Equity went on ſmoothly in the Court of Chancery, and increas'd while *John Kemp* Biſhop of *York* was Lord Chancellor, about the 28 *H.* 6. But it increas'd moſt of all under *Cardinal Wolſey*, who was made Chancellor 8 *H.* 8. and continued ſo till 21 *H.* 8.

The great Learning and Abilities of the Chancellors and Keepers of the Great Seal, in the Reign of Q. *Elizabeth* and her Succeſſors, together with their immediate Attendance on the Perſon of the Prince, being to inſpect and ſign all Royal Mandates, Grants, Commiſſions, *&c.* have not only enlarg'd their Authority in Proceedings in Equity, but wonderfully endear'd

them to the Favour of their Sovereigns. And hence it was, that when a Controverſy happen'd 14 *Jac.* 1. between Sir *Edward Coke*, then Lord Chief Juſtice of *B. R.* and the Lord *Chancellor Egerton*, the Chief Juſtice ſaying, on Occaſion of the Chancellor's queſtioning a Judgment given in the King's Bench, *that the Common Law of* England *would be overthrown by the Chancery, and the Light of the Law would be obſcur'd by Pretence of Equity:* The Chief Juſtice was thereupon forced to beg Pardon on his Knees at the Council Table, and ſeverely reprimanded by the King, he was ſequeſtred from the Council, reſtrain'd from riding the Circuit, and ſoon after remov'd from his Office; and thereby the extraordinary Juriſdiction of the Court of Chancery in controlling Judgments given at Common Law, was by the *King's Order and Decree* in Chancery exemplified and enrolled in that Court for a perpetual Record, enlarged or eſtabliſhed. *Chanc. Rep. Vol.* 1.

In the *Reports* of Caſes in Chancery publiſh'd by Sir *George Cary*, this Order or Decree is inſerted, with the Proceedings thereon; which containing a great many Particulars worthy to be known, as well as being a Matter of Curioſity, I ſhall here preſent the Readers with it, as taken from the aforementioned Report.

'JAMES by the Grace of God, *&c.* Whereas 'our Right Truſty and well beloved Sir '*Francis Bacon*, Knt. our Counſellor and Attor-'ney General, receiv'd a Letter from our Chan-'cellor of *England*, dated the 19th of *March* '1615.

'1615. written by our expreſs Command, di-
'recting and requiring him and the reſt of our
'learned Council, to peruſe ſuch Precedents as
'ſhould be produced unto them, from the
'Time of K. *H.* 7. and ſince, of Complaints
'made in the Chancery, there to be relieved
'according to Equity and Conſcience, after
'Judgments in the Courts of Common Law,
'in Caſes wherein the Judges of the Common
'Law could not relieve the Parties, and there-
'upon to certify us of the Truth of what they
'ſhall find, and of their Opinions concerning
'the ſame; which Letter follows in theſe
'Words,

'*Maſter Attorney*, His Majeſty being inform'd,
'that there are many Precedents in the Court
'of Chancery, in the Time of K. *Hen.* 7. and
'continually ſince, that ſuch as complained
'there have been relieved according to Equity
'and Conſcience, after Judgments in the Courts
'of the Common Law, in Caſes where the
'Judges could not relieve them (being bound
'by their Oath to obſerve the ſtrict Rules of the
'Law) is willing to underſtand whether there
'be ſuch Precedents as he is inform'd of: And
'therefore hath commanded me to let you
'know that his Will and Pleaſure is, that you
'call to aſſiſt you his Majeſty's Serjeants and So-
'licitor, and do peruſe ſuch Precedents of this
'Kind, as ſhall be produc'd unto you; and there-
'upon to certify his Majeſty of the Truth of that
'you ſhall find, and of your Opinions concern-
'ing the ſame. And for your better Directions
'therein, I have ſent you here enclos'd a Note

'in Writing, delivered unto me, mentioning 'ſome ſuch Precedents in K. *Henry* the Seventh's 'Time, and ſince: And I am told that there 'are the like in former Times; his Majeſty ex-'pects your Proceeding in this with as much 'Speed as conveniently you may. And ſo I reſt,

Your aſſured and loving Friend,

T. ELLESMERE, *Canc.*

'And whereas our Attorney General, and the 'reſt of our Learned Council did thereupon re-'turn to us their Certificate, ſubſcribed with all 'their Hands, according to our Command, and 'Direction given them by the ſaid Letter, which 'Certificate followeth in theſe Words, *viz.*

'According to your Majeſty's Command, we 'have adviſedly conſidered of the Note deliver-'ed to us, of Precedents of Complaints and Pro-'ceedings in Chancery, after Judgments in Com-'mon Law; and alſo have ſeen and peruſed 'the Originals, out of which the Note was ab-'ſtracted, upon all which we find and obſerve 'the Points following. 1. We find, that the 'Note is fully verify'd and maintain'd by the 'Originals. 2. That there hath been a ſtrong 'Current of Practice and Proceeding in Chan-'cery after Judgment, and many Times after 'Execution, continu'd from the Beginning of 'the Reign of K. *Hen.* 7. to the Time of the 'Lord Chancellor that now is, in the Times 'of ſeveral Kings, and of ſeveral Chancellors, 'whereof divers were great and learned Men 'in the Law: It being in Caſes, where there is

'no

'no Remedy for the Subject, by the ſtrict Courſe 'of the Common Law, to which the Judges 'are ſworn. 3. That theſe Proceedings in Chan-'cery, have been after Judgments, in Actions 'of ſeveral Natures, as well real as perſonal. '4. That it hath been after Judgments in your 'Majeſty's ſeveral Courts of Kings Bench, Com-'mon Pleas, *&c.* 5. And that it hath been af-'ter Judgments obtain'd upon Verdicts, Demur-'rers, and where Writs of Error have been 'brought. 6. That in many of the Caſes, the 'Judgments are expreſly mentioned in the Bills 'in Chancery themſelves to have been given, 'and Relief prayed thereupon, ſometimes after 'Execution. 7. That the Matters in Equity 'laid in ſuch Bills, in moſt of the Caſes have 'been Matters precedent before the Judgments. '8. That in the ſaid Caſes, not only the Bill was 'preferr'd, but Motions, Orders, Injunctions, and 'Decrees thereon, for the diſcharging of the 'Judgments, or abiding the Poſſeſſion there-'upon were obtain'd, and ſometimes for the 'mean Profits, and Releaſe of the Coſts, *&c.* '9. That in ſome of the Caſes, in the very 'Point that Judgment hath been given, it hath 'been ſtood upon by the Defendants, and al-'ledged by them by way of Demurrer, but 'over-ruled. 10. That the Judges themſelves 'in their own Courts, when there appear'd to 'them Matter of Equity, becauſe they by their 'Oath and Office could not ſtay the Judgments, 'have directed the Parties to ſeek Relief in 'Chancery. 11. That this hath not only been 'in the Times and Sittings of the ſeveral Chan-

'cellors,

'cellors, but of the Judges themſelves, when 'they ſate in Chancery, in the Vacancy or Ab-'ſence of the Chancellor. 12. That the Hands 'of ſundry principal Counſellors at Law, 'whereof divers of them were afterwards 'Judges, and ſome in chief Place, are to Bills 'of this Kind. 13. And laſtly, that there were 'ſhewn many other Precedents beſides thoſe 'contain'd in the Note, whereof ſome being 'read were found to be of like Nature, *&c.*

'And as to the Statute 4 *H.* 4. we conceive 'that it extendeth not to the Chancery in the 'Caſe delivered, for theſe Reaſons. 1. This 'Statute recites where the Parties are made to 'come upon grievous Pain, ſometimes before 'the King and his Council, and ſometimes in 'Parliament, to anſwer anew, *&c.* where it 'appeareth that the Chancery is not named, 'which could not have been forgot, but was 'left out upon great Reaſon, becauſe the 'Chancery is a Court of ordinary Juſtice for 'Matter of Equity; and the Statute means 'only to reſtrain extraordinary Commiſſions. 2. This appears fully on comparing the two 'Petitions which were made the ſame Parlia-'ment of K. *H.* 4. placed immediately one be-'fore the other; the firſt, which was rejected, 'and the ſecond whereupon this Statute was 'made: Whereof the firſt was to reſtrain the 'ordinary Proceedings of Juſtice, in the Chan-'cery by Name, *&c.* by Proceſs of Privy Seal; 'to which the King made Anſwer, that he 'would charge his Officers to be more ſparing 'to ſend for his Subjects by ſuch Proceſs than

'heretofore they have been; but notwithſtanding it was not his Mind that the Officers 'ſhould ſo far refrain, but that they might call 'the Subjects before them, in Matters and 'Cauſes neceſſary, as it had been done in former Times; and then immediately follows 'the Petition whereon the Act now in Queſtion was made, to which the King gave his 'Aſſent, and wherein no Mention is made at all 'of the Chancery. 3. If the Chancery ſhould 'be underſtood to be within the Statute, yet the 'Statute extends not to this Caſe; for the Words 'are, that the King's Subjects are driven to anſwer thereof anew, which muſt be underſtood 'when the ſame Matter formerly judg'd is put 'in Iſſue or Queſtion again; whereas when the 'Cauſe is called into the Chancery only upon 'a Point of Equity, there as the Point of Equity was never in Queſtion in the Common 'Law Court, ſo the Point of Law, or of Fact 'as it concerns the Law, is never in Queſtion in 'the Chancery; ſo that the ſame thing is not 'twice in Queſtion, or anſwered anew, for the 'Chancery doth ſupply the Law, and not croſs it. '4. It appears by the Clauſe of Error and Attaint 'in the ſame Statute, what Juriſdiction it was 'that the Statute meant to reſtrain, *viz.* ſuch Juriſdiction as did aſſume to reverſe and undo the 'Judgment, as Error or Attaint doth, which the 'Chancery never does, but leaveth the Judgment 'in Peace, and only meddles with the corrupt 'Conſcience of the Party; and if the Chancery 'ſhould reverſe the Judgment in the Point adjudged, it would be void. 5. That there are no

'Precedents

'Precedents of any proceeding to Conviction, 'or Judgment, upon any Indictment framed or 'grounded upon this Statute, no more than on 'the Statute of *Præmunire*, *&c.* 6. That it 'was a great Miſchief, to force the Subject in 'all Caſes to ſeek Remedy in Equity, before 'he knew whether the Law would help him 'or no, which oftentimes he cannot do till af-'ter Judgment; and therefore he is to take his 'Salve or Remedy properly, when he hath his 'Hurt. And there are divers other Things of 'Weight, which we have ſeen and conſidered 'of, whereupon we have grounded our Opini-'on; but becauſe Matters of Precedents are 'greatly conſiderable in this Caſe, and we have 'been attended by the Clerks of the Chancery 'with the Precedents of that Court, and have 'not been yet attended by any Officer of the 'King's Bench with any Precedents, *&c.* we go 'no further; all which is ſubmitted, *&c.*

Francis Bacon, Randall Crew,
Henry Montague, Henry Yelverton.

'Now foraſmuch as Mercy and Juſtice are 'the true Supports of our Royal Throne, and 'that it properly belongs to us in our Princely 'Office, to take Care and provide, that our 'Subjects have equal and indifferent Juſtice mi-'niſtred to them; and that where their Caſe de-'ſerves to be relieved in Courſe of Equity by 'Suit in our Court of Chancery, they ſhould

'not be abandon'd and expos'd to periſh under
'the Rigour and Extremity of our Laws; We,
'in our Princely Judgment having well weigh-
'ed, and with mature Deliberation conſider'd
'of the ſaid Report and Certificate of our learn-
'ed Councel, and all the Parts thereof, do ap-
'prove, ratify and confirm, as well the Practice
'of our Court of Chancery expreſs'd in the ſaid
'Certificate, as their Opinions for Law upon
'the Statute mention'd therein, they having Re-
'lation to the Caſe ſent them by our Chancel-
'lor; and we do will and command, that our
'Chancellor or Keeper of the Great Seal for the
'Time being, ſhall not hereafter deſiſt to our
'Subjects, upon their Complaints, ſuch Relief
'in Equity (notwithſtanding any former Pro-
'ceedings at Common Law againſt them) as
'ſhall ſtand with true Merit and Juſtice of their
'Caſes, and with the former ancient and conti-
'nued Practice and Proceeding of our Chancery;
'and for that it appertains to our Princely Care
'and Office, to judge over all our Judges, and to
'determine ſuch Differences as at any Time may
'or ſhall ariſe between our ſeveral Courts, touch-
'ing their Juriſdictions, and the ſame to ſettle
'as we in our Wiſdom ſhall find to ſtand moſt
'with our Honour, and the Example of our
'Royal Progenitors in the beſt Times, and the
'general Good of our People, *&c.* And our
'Will and Pleaſure is, that our whole Proceed-
'ings herein by the Decrees formerly ſet down,
'be inrolled in our Court of Chancery, there

'to

'to remain of Record, for the better extin-
'guiſhing the like Queſtions or Differences that
'may ariſe in future Times.

18 *Julii, Anno* 14 R. *Regis, &c.* *Per ipſum Regem.*

Franc. Bacon.
Hen. Yelverton.

This is the *Ordinance* and Decree of K. *James* I. for limiting the Juriſdiction of the Chancery; which has been called *Opus Arbitrii ſui, &c.* for that the King himſelf, without his Parliament, cannot limit or determine the Power or Juriſdiction of the eſtabliſhed Courts at Law: But be that as it may, as it contains a Search into the Riſe and Beginning of the Practice of the Court, in giving Relief after Judgments at Law, which is found thereby to be warranted by many ancient Precedents, on the footing of thoſe Precedents at leaſt I preſume this Practice hath continued.

The *Juriſdiction* of this Court, is of two Kinds, *viz. Ordinary*, or Legal; and *Extraordinary*, or Abſolute.

As a Court of Law, in the *Ordinary Juriſdiction*, this Court iſſues Writs both Mandatory and Remedial: Original Writs, to found the Proceedings of the *King's Bench*, and *Common Pleas*, iſſue from hence; and ſome of theſe not Writs of Courſe, but contriv'd and adapted to the ſpecial Caſe of the Suitor, formerly under the immediate Direction of the Court itſelf: Many other Writs, relative to Suits commenced

or depending in other Courts are likewiſe iſſued out of this Court, ſome of which alſo muſt be ſpecially applied for, and it is in the Judgment of the Court, whether they ſhall be granted or not: Other Writs not returnable in, nor relative to Proceedings in other Courts, ſome at the Common Law, and others by Statute, do alſo iſſue from this Court, divers of which in like Manner require the Direction or Judgment of the Court.

Whilſt Tenures remain'd as they were at the Common Law, they occaſion'd much Law Buſineſs in this Court: Before the Erection of the Court of Wards, great Part of the Proceedings concerning Wardſhips was tranſacted in the Legal Court of Chancery; and after the Erecting that Court, and before the Taking away Wardſhips from the Crown, by the Statute 12 *Car.* 2. a good deal of Buſineſs relating to Tenures remain'd in the Court of Chancery, by reaſon of Inquiſitions return'd there, and Proceedings upon them; but as to Tenures, *&c.* the Buſineſs of the Court is now conſiderably leſſened, if not wholly taken away.

All Commandments upon any Occaſion for the Safety of the Realm, or the good Government thereof, were heretofore by Writs paſs'd under the Great Seal in the Court of Chancery; and this Court had originally great Extent of Juriſdiction, and Multiplicity of Buſineſs: At this Day it grants Commiſſions touching Charitable Uſes, of Bankrupts, of Ideots and Lunacy, to inquire of Infancy, Legitimacy, and to examine Witneſſes *in perpetuam rei Memoriam, &c.*

And

And in ſome Caſes Commiſſions have been granted to examine Waſtes, ſet out Ways for Paſſages, to prove Cuſtoms and Uſages, *&c.* for which this Court is always open; and ſometimes a *Superſedeas*, or Writ of Privilege, hath been here granted to diſcharge a Perſon out of Priſon: One from hence may have a *Habeas Corpus*, Prohibition, *&c.* in the Vacation, which are to be had out of the other Courts only in Term-Time; and here a *Subpœna* may be had to force Witneſſes to appear in other Courts, when they have no Power to call them. 4 *Inſt.* 79.

This Court holds Plea of *Scire facias's* for Repeal of the King's Letters Patents, of Petitions, *Monſtrans de Droit*, Traverſes of Offices, *Scire facias* upon Recognizances acknowledged in the Chancery, Executions upon Statutes, Writs of Partition, *&c.* and Pleas of all Perſonal Actions, by or againſt any Officer or Miniſter of the Court; alſo by Act of Parliament of ſeveral Offences and Cauſes; wherein this Court is to obſerve the Order and Method of the Common Law, and the Proceedings are uſually in *Latin*, and for the moſt Part filed or inrolled in the *Petty-Bag Office*: In theſe Caſes the Parties are to plead and join Iſſue here as at Law, and the Record being made up in the *Petty-Bag Office*, is from thence tranſmitted into the *King's Bench* to be tried by a Jury there. Alſo Iſſues are directed out of the Court of Equity in Chancery into *B. R.* to try the Validity of ſome Point in Queſtion, in any Cauſe there depending; upon Action brought by Conſent of the Parties Complainant and De-

fendant, or by Order of the Court, on ſome feigned Agreement, *&c.* and then the Verdict is to be certified hither, and this Court is to give Judgment, *&c.*

If there be a Demurrer in Law, it ſhall be argued and adjudg'd in the Chancery, without being ſent into the Court of *B. R.* On a Judgment given in this Ordinary or Legal Court of Chancery, it is ſaid, a Writ of Error may be brought returnable in *B. R.* as there may be a Bill of Review where there is any Error in Proceedings in the Extraordinary Court of Equity; or an Appeal to the Houſe of Lords. 4 *Inſt.* 80.

The *Extraordinary or Abſolute Juriſdiction* in the Court of Chancery, is that Juriſdiction which this Court exerciſes in Caſes of Equity, wherein Relief is to be had by *Engliſh Bill and Anſwer*; in which Proceedings, the Matter being heard upon Bill and Anſwer, and the Proofs of Witneſſes read, the Court may without any Regard to Form or Miſpleading, ſo as the Truth be diſcovered, proceed to ſentence it according to Equity and good Conſcience. It is unlimited in Power, and proceeds by the Rules of Equity, moderating the Rigour of the Common Law, and conſidering the Intention rather than the Words of the Law; and in many Caſes this Court will give Relief againſt, beſides and beyond the Rules of the Common Law.

It gives Relief for and againſt Infants, notwithſtanding their Minority; and for and againſt Feme Coverts, notwithſtanding their Coverture: In ſome Caſes a Woman may ſue her Husband, as for Maintenance, when he is beyound Sea, *&c.*

&c. and be compelled to anſwer without her Husband: All Frauds and Deceits, for which there is no Redreſs at Law; all Breaches of Truſt, and Confidences, and Accidents, as to relieve Obligors, Mortgagors, *&c.* againſt Penalties and Forfeitures, where the Intent was to pay the Debt, are here remedied: For in Chancery a Forfeiture ſhall not bind, where a Thing may be done after; and no Penalty can be demanded, if the Party performs that for which the Security is given. 1 *Danv. Abr.* 752. 2 *Ventr.* 352. 1 *Roll.* 373. 2 *Chanc. Caſ.* 88. Infants under the Age of twenty-one Years, ſeiſed of Eſtates in Truſt, or by Way of Mortgage, are enabled by Statute to make Conveyances thereof, or they may be compelled thereto, by Order of the Court of Chancery, upon Petition and hearing the Parties concern'd. *Stat.* 7 *Ann. c.* 9. And Perſons in Remainder of any Eſtate, after the Death of another, on making Affidavit that they have Cauſe to believe ſuch other Perſon dead, and his Death concealed by the Guardian, Truſtees, or others, may move the Lord Chancellor to order ſuch Guardian, Truſtees, *&c.* to produce the Perſon ſuſpected to be concealed; and if he be not produced, he ſhall be taken to be dead, *&c.* 6 *Ann. c.* 17.

This Court may decree who ſhall have the Tuition of a Child, order Performance of a Will; and here Executors may ſue one another, or one Executor alone may be ſued without the reſt: Executors, *&c.* may be obliged to give Security and pay Intereſt for Money that is to lie

lie long in their Hands: In this Court a Title to Lands may be confirmed, though one hath loſt his Writings; Conveyances defective through Fraud or Miſtake, may be made good and perfect; but not Defects in a voluntary Conveyance, unleſs where intended as a Proviſion for younger Children, *&c.* Where by Law a Man cannot be compelled to perform an Agreement, this Court enforces it; alſo will give Relief againſt the Extremity of unreaſonable Engagements, entered into without Conſideration; oblige Creditors that are unreaſonable to compound with an unfortunate Debtor; and compel Men to account with each other. 2 *Ventr.* 346, 365. 1 *Danv.* 749. Bonds for Money to procure Marriages; or to return Part of a Portion, are void in Equity: But a Man is not bound to diſcover the Conſideration of a Bond generally given, which implies in it ſelf a Conſideration. 1 *Salk.* 156. *Hard.* 200.

Where a Factor to a Merchant hath Money in his Hands, it ſhall be accounted his own, for Equity cannot follow Money; but it may Goods, to make them the Merchant's, which may be known, though Money cannot. 1 *Salk.* 260. Money articled to be laid out in Land, ſhall be taken as Land in Equity, and deſcend to the Heir at Law. *Ibid.* 154. Perſonal Eſtate in the Hands of Executors, ſhall be applied in Diſcharge of the Heir, where there is ſufficient Aſſets to pay Debts and Legacies. 1 *Danv.* 770. And where Truſtees convert Money raiſed out of Land for Payment of Debts, to their own Uſe, the Heir ſhall have the Land diſcharged,

which hath born its Burden, and the Truſtees are liable to the Debts on a Suit in Chancery. 1 *Salk.* 153.

If Leſſee for Years without Impeachment of Waſte, about the End of his Term cuts down Timber-Trees, the Court of Chancery by Injunction may ſtop the Cutting down the Trees, it being againſt the Publick Good to deſtroy Timber. 1 *Roll. Abr.* 380. Alſo Tenant after Poſſibility of Iſſue extinct, or for Life, diſpuniſhable of Waſte, may be ſtopped in Equity from pulling down Houſes, *&c.* 1 *Danv.* 761. In Chancery, Copyholders may be relieved againſt the Ill Uſage of their Lords, and Incloſures of Common be decreed; and this Court may Decree Aſſignments of Things in Action to be good, avoid the Bar of the Statute of Limitations, *&c.* for Debts thus barred, are ſtill Debts in Equity. 1 *Danv. Abr.* 750. 1 *Salk.* 154. If a Suit be in the Chancery for a Debt, and beginneth within Time of Limitation, but is diſmiſſed afterwards, the Court will not order the Defendant to take no Advantage of the Statute of Limitations; but if in the Suit the Party is ſtay'd by Injunction, *&c.* it is otherwiſe; in ſuch Caſe the Act of the Court ſhall do no Prejudice, as in Caſe of Demurrers at Common Law. 2 *Chanc. Caſ.* 217.

It is common to give Relief in Chancery, tho' there be an Agreement that there ſhall be no Relief in Law or Equity. 1 *Mod.* 141. And in Caſe of an apparent Fraud, or in a dubious Caſe of Law, of which the Party could not have Cogniſance, Relief may be had in Equity againſt a Statute.

Statute. 1 *Danv.* 759. But though the Power of this Court is ſo great, and it may reſtrain other Courts that exceed their Juriſdiction, and remove Suits to it ſelf by *Certiorari*, yet it is no Court of Record; and therefore 'tis ſaid can bind the Perſon only, and not the Eſtate of the Defendant: And if the Party will not obey the Decree of the Chancellor, he muſt be committed 'till he does. 1 *Danv. Abr.* 749. 4 *Inſt.* 84. Where Decrees have been made after Judgments at Law, and the Parties committed to Priſon for Non-performance; in ſome Caſes there are Inſtances where they have been diſcharged by *Habeas Corpus* out of *B. R. Cro. Eliz.* 220. 1 *Roll. Rep.* 252. And it appears in Times paſt, that the Chancellor uſed to ſend for the Judges to know when Equity ſhould be admitted againſt the Common Law. 2 *Roll.* 434. And when the Law expounds a Thing according to an equitable Conſtruction, there is no Reaſon for Equity to extend it farther. 3 *Chanc. Caſ.* 126.

In all Caſes, where the Plaintiff can have his Remedy at Law for the ſame Thing, he ſhould not be relieved in Chancery. *Cary's Rep.* 71. The Chancery refuſes Relief in Suits where the Subſtance of them tends to the Overthrow of any fundamental Point of the Common Law, or of an Act of Parliament: It will not relieve a Man againſt an expreſs Maxim or the Reaſon of the Common Law. 1 *Roll. Abr.* 375. An Executor, in a Court of Equity, ought not to be compelled to pay Legacies, before Debts on Bond, *&c.* becauſe it is againſt the Common Law, 1 *Danv. Abr.* 756. If a Perſon loſes his Obliga-

Obligation, he ſhall not be relieved for his Debt, being againſt a Maxim in Law. 1 *Chanc. Caſ.* 78. If Two ſubmit to the Award of *A. B.* of all Controverſies, who makes his Award but of Part of the Matter ſubmitted, ſo that it is void in Law; this ſhall never be made good in Equity. 1 *Roll. Abr.* 377. So in many other Caſes. 1 *Danv.* Alſo if a Man by his own Act deſtroys his Remedy at Law, he ſhall not be relieved in Chancery. *Ibid.* 755. It has been held, that if a Man comes to be Remedileſs at Common Law by his own Negligence, Equity ſhall not relieve him; as if he pays Money due on Specialty, without an Acquittance or delivering up of the ſame: But by the preſent Practice of this Court, Relief may be had in this Caſe. 1 *Bulſt.* 158.

Long Leaſes, as for 1000 Years; naked Promiſes, without Conſideration; verbal Agreements, not executed; Leaſes Parol, or Suits grounded upon nuncupative Wills; Perpetuities of all Kinds; Eſtates derived under concealed Titles, *&c.* have been refuſed Relief in this Court: And Mortgages are not relievable in Equity after Twenty Years, where no Demand has been made or Intereſt paid, or there are not other favourable Circumſtances, *&c.* 2 *Ventr.* 340. This Court will not retain a Suit for any Thing under 10*l.* Value, except in Caſes of Charity; nor of Lands, *&c.* under 40*s. per Annum*, unleſs it be for a Rent-Service.

And there are certain general Rules to be obſerved by this Court, which in Matters of Equity do reſtrain its extraordinary Power; and

as divers Statutes have altered, reſtrained, or enlarged its Power in ſome particular Caſes, the Court of Chancery in its equitable Juriſdiction is to exerciſe its Authority ſo far only as ſuch Statutes do direct. 1 *Chanc. Caſ.* 136.

And where the Chancery, according to Rule, cannot relieve in a juſt Cauſe, the Parliament will give ſpecial Directions for Relief therein. *Ibid.* 205.

Vide more under the *Head* of *Caſes in Chancery* at the End of this Treatiſe.

Of

Of the Antiquity, Office and Authority of our Lord Chancellors of England.

THE Lord Chancellor of *England*, now there is no Lord High Steward, is accounted the Firſt great Officer of State: He is next unto the King, and the ſupreme Judge of the High Court of Chancery. This Name of Chancellor, *Caſſiodorus* fetches from *croſs Grates* or *Lattices*, becauſe Chancellors examined Matters within Places encloſed and ſeparated with croſs Bars, which the *Latins* call *Cancelli*; and in regard that what he doth as Chancellor cannot be hidden, when he doth it within Lattices and Grates, where he may be ſeen on every Side, and thereof it may be thought he took that Name.

But conſidering, it was his Part, (ſaith our *Camden*) to ſtrike and daſh out with croſs Lines Lattice-like, thoſe Commiſſions, Warrants and Decrees paſſed againſt Law and Right, or prejudicial to the Commonwealth, which is not improperly termed to *Cancel*, ſome think the Name of Chancellor came from this *Cancelling:* And agreeable to this are the Words of Sir *Edw. Coke*, where he ſays the Judgment in a *Scire facias* to repeal the King's Letters Patent is this; *Quod prædictæ Literæ patentes dicti Domini Regis revocentur*, & Cancellentur, *evacuentur, adnullentur, & vacuæ & invalidæ pro nullo penitus habeantur, & teneantur; Ac etiam quod Irro-*

Irrotulamentum eorundem Cancelletur, *caſſetur*, *& annihiletur*, *&c.* Hereof our Chancellor of *England* is called *Cancellarius*, *à Cancellando*, *i. e. à digniori parte*, being the higheſt Point of his Juriſdiction, to cancel the King's Letters Patent under the Great Seal, and damn the Inrollment thereof, by drawing Strokes through it like a Lattice. *Camd.* 180. 4 *Inſt.* 88.

The Chancellor is ſaid to be originally a chief Notary or Scribe under the *Emperor*; and, as *Lupanus* thinks, ſignified only the Regiſters in Court; *Grapharios*, *ſcil. qui conſcribendis & excipiendis Judicum actis dant operam:* But this Name and Officer is of late Times greatly advanced, not only in this, but in other Kingdoms; for he is the chief Adminiſtrator of Juſtice next to the Sovereign, who anciently heard equitable Cauſes himſelf, the Court of Equity under the Old Conſtitution, being held before the King and his Council in the Palace, where one ſupreme Court for Buſineſs of every Kind was kept. There were Chancellors in the Reigns of our *Britiſh* and *Saxon* Kings, long before the Time of *William the Conqueror*; as King *Athelſtane* had *Wolfine* for his Chancellor, King *Edgar Radulph*, and *Edward the Confeſſor Rembald*, &c. and theſe had great Authority under their Kings, in all Probability drawn from the reaſonable Cuſtoms of neighbouring Nations, and the Civil Law: Though it may be difficult to determine in what their Office did particularly conſiſt; according to ſome Writers, it did conſiſt in delivering the King's Mind to the *Houſe of Peers*, and theirs reciprocally to the King, and there-

therefore the Chancellor is termed the *Speaker of that Houſe*; but others ſay, that his Office conſiſted in *cancelling unjuſt Laws*, or rather, as at this Day, in moderating the Rigour of the Common Law.

Anciently the great Officer called *Chancellor*, was ſtiled *Referendarius*, or *Vicarius Regis in foro Conſcientiæ*: And *Ingulphus* Abbot of *Croyland*, in his Life of King *Edward the Elder*, ſays that this King made *Thurketil*, a Predeceſſor of the ſame Abbot, his Chancellor, *ut quæcunque Negotia Temporalia vel Spiritualia Regis Judicium expectabant, illius Conſilio & Decreto, (nam tantæ fidei & tam profundi ingenii tenebatur) Omnia tractarentur & tractata irrefragabilem Sententiam ſortirentur*: Which ſhews as well the Antiquity, as the abſolute Power of this Chancellor in decreeing ſuch Cauſes as were brought by Appeal to the King himſelf; and therein he ſeems to have the King's Conſcience or Judgment, both in Spirituals and Temporals, delegated to him. *Ingulph. Anno* 920.

But there are ſome *Hiſtorians* who affirm, that though the Chancellor had great Power and Authority in Times of Antiquity, he was inferior to the *Chief Juſtice*, who was *Primus* in Dignity, and the *Chancellor*, *Secundus*: And that the Lord Treaſurer had the Cuſtody of the Great Seal, but ſealed up in a Cheſt in the Treaſury with the Chancellor's own Seal; and that it could not be brought thence into Court, but by the Chief Juſtice's Warrant, ſo that the Chief Juſtice, Chancellor, and Treaſurer, were Cheques as it were on each other touching the

Cuſtody of the Great Seal; which by *Mat. Paris* is called *Sigillum Regni:* And it was the wiſe Caution of Antiquity, never to commit the Cuſtody of the *Inſignia* of ſo great a Truſt, to the Perſon who was to exerciſe it, but only during the publick Execution of that Truſt. *Mat. Weſtm. Temp. Hen.* 2.

It is very probable that in the earlieſt Time, there were *Vice-Chancellors* or Keepers of the Seal, beſides Chancellors; the former having the Cuſtody of the Seal, but not the Power to uſe it; and the latter having the Power of uſing it, were not allowed to have the ſole Cuſtody of it: And I take it to be plain, that from the Reign of *Will.* 1. called the Conqueror, down to the 23 *Hen.* 3. the Office of Keeper of the Great Seal was diſtinct from that of Chancellor; and there appears to be a great Difference in their ancient Election or Creation, as well as in their Power and Authority; for the Keeper was ever ſolely at the Nomination of the King; but 'twas otherwiſe of the Chancellor, who was often elected or nominated by the Parliament; and whereas the Chancellor was ſworn at his Entrance into Office, the Keeper never was; and the Reaſon was, becauſe the Chancellor had a judicial Power, the Keeper only miniſterial, *&c.*

Sometimes, 'tis true, the Offices of Chancellor and Keeper were united in one Perſon; and this was the Caſe of *Ralph Nevil*, who being 11 *H.* 3. made Chancellor for Life by the Parliament, the King afterwards in the 15th Year of his Reign, gave him the Cuſtody of the Great Seal; but *Anno* 22 *H.* 3. the King took away

away the Seal by Force from him, and gave it to Two others, ſo that in this King's Time there was a Lord Chancellor, and Two Lord Keepers *uno & eodem inſtanti.* Mat. Paris. 474. The Hiſtorian ſaith, That the Prince demanding the Seal at the Hands of the Chancellor, he refuſed to deliver up the ſame; affirming that as he had received it by the common Conſent of the Three Eſtates of the Realm in Parliament, ſo he would not without like Warrant reſign the ſame: And in the Days of the ſame King, it was told him by all his Lords Spiritual and Temporal, that of antient Time the Election and Diſpoſition of the *Chief Juſtice*, *Chancellor*, and *Treaſurer*, belonged to the Parliament; and although the King being offended with the ſaid *Nevil*, did in Diſpleaſure take the Seal from him, yet did he remain Chancellor notwithſtanding, and received the Profits thereof, to whom the King would have reſtored the Great Seal, but he refuſed to receive it from him. *Obſervat. on Office Lord Chanc.* by Lord *Eleſmere* 15, 16.

Three ſeveral Patents were granted unto this *Ralph Nevil*, Two whereby he is ordained to be Chancellor, and the Third for the Cuſtody of the Seal, all remaining among the Records in the *Tower*, *in hæc verba.*

HEnricus *Rex, &c. Archiepiſcopis, Epiſcopis, &c. Sciatis nos dediſſe, conceſſiſſe, & hac Charta noſtra confirmaſſe Venerab. Patri Randolpho de Nevil Ciceſtrenſi Epiſcopo Cancellariam noſtram Habend. & Tenend. toto tempo-*

re vitæ ſuæ, cum omnibus pertinen. Libertatibus & liberis Conſuetudinibus ad prædictam Cancellariam noſtram, habeat bene & in pace libere & quiete, integre, honorifice, cum omnibus exitus libertatibus & omnibus aliis ad eam pertinentibus ſicut Cancellar. Regn. Angl. prædeceſſor. noſtror. ea melius quietus liberius & integrius habuere. Hiis Teſtibus, &c. Datum Anno Regni noſtri, &c.

The *Second Patent* to the aforeſaid *Ralph*, ſome Years after, was of this Form.

HEnricus *Dei Gratia, &c. Sciatis nos conceſſiſſe & hac Charta noſtra confirmaſſe pro nobis, & hæred. noſtris Venerab. patr. Randolpho Ciceſtrenſi Epiſcopo Cancellario noſtro Cancellar. Angliæ toto tempore vitæ ſuæ cum omnibus pertin. libertatibus & liberis Conſuetudinibus ad prædict. Cancellar. pertinen. quare volumus & firmit. præcipimus pro nobis & hæred. noſtris quod prædictus Epiſcopus habeat ipſam Cancellariam toto tempore vitæ ſuæ cum ombibus pertinent. Libertat. & liberis conſuetudinibus ad prædictam Cancellar. pertin. ſicut prædictum eſt. Teſtibus, &c.*

This is the Tranſcript of his *Third Patent* the ſame Day and Year as the laſt.

HEnricus, *&c. Sciatis nos conceſſiſſe, &c. Venerab. patri Randolpho Ciceſtr. Epiſcopo Cancellar. noſtr. Cuſtodiam Sigilli noſtri toto tempore*

tempore vitæ ſuæ cum omnibus pertin. Libertat. & conſuetudinibus ad prædict. Cuſtod. pertinent. Ita quod Sigillum illud portat & cuſtodiat in propria Perſona ſua quamdiu voluerit, vel per aliquem virum diſcretum ſufficientem & idoneum aſſignat. ſuum qui quidem aſſignat. nob. fidelitat. faciat de fideli Servitio & de Sigillo noſtro loco ſuo fideliter cuſtodiendo, aut quam cuſtodiam prædicti Sigilli recipiat. Et ſi forte idem aſſignat. ſuus diſceſſerit, vel vitam ſuam mutaverit, vel ob cauſam rationalem per nos vel per ipſum Cancellar. amotus fuerit, vel ipſe aſſignat. Sigillum illud ulterius portare voluerit, idem Cancellarius loco illius aſſignat. alium virum diſcretum ſufficientem & Idoneum ſubſtituat. Item quod fidelitatem faciat nobis de fideli ſervitio ſuo & de predicto Sigillo loco ſuo fideliter cuſtodiend. antiqua Carſtiaca ſigilli prædicti recipiat ſicut prædictum eſt, quare volumus & firmiter præcimus quod prædictus Cancellar. habeat Cuſtodiam, &c. Hiis Teſtibus, &c.

In theſe Patents, there is no Mention of the Conſent of the Parliament; but the antient Entries of the Appointments of Chancellors, are *Talis Perſona Cancellarius, vel in Cancellariam Angliæ electus eſt, in Pleno Parliamento nominatus*; or *per Regem & Parliamentum conſtitutus, &c.* Some Chancellors had Patents of the King, and were confirmed Chancellors by Conſent of the Three Eſtates; and ſome had Patents to hold the Office for Life, as the aforementioned Chancellor, but for the moſt Part, our Chancellors have been choſen by the King

durante beneplacito, and put in Poſſeſſion of their Office by the Delivery of the Seal; tho' 'tis ſaid that in the Time of King *Hen.* 2. the Manner of ordaining a Chancellor, was by hanging the Great Seal of *England* about the Neck of the Chancellor Elect *Camd.* 131.

A Chancellor may be made ſo at Will by Patent; and it hath been holden not to be grantable by the King by Patent for Life; for being an antient Office, it ought to be granted as hath been generally accuſtomed: And although the Earl of *Clarendon* was appointed Chancellor for Life, he was diſmiſſed from that Office, and his Patent declared void. 4 *Inſt.* 87. 1 *Sid. Rep.* 338.

King *Hen.* 5. had Two Great Seals, one of Gold which he delivered to the Biſhop of *Durham*, and made him Lord Chancellor; and another of Silver which he delivered to the Biſhop of *London* to keep. And before the Stat. 5 *Eliz. cap.* 18. there might be a Lord Chancellor, and Lord Keeper, at one and the ſame Time; but at this Day there being but one Great Seal, there cannot be a Lord Chancellor and Lord Keeper at once, and becauſe they are but one Office by the Statute of 5 *Eliz.* and the taking away the Seal determines the Office. 1 *Sid.* 338.

There was no abſolute Conjunction, or Declaration that the Offices of Chancellor and Keeper were the ſame, 'till the Time of Sir *Nicholas Bacon* Lord Keeper; when by the Stat. 5 *Eliz. cap.* 18. 'twas Enacted, That the Common Law of the Realm is and always was, and ought

ought to be taken, that the *Keeper of the Great Seal* of *England*, for the Time being, hath always had, uſed and executed, and of Right ought to have, uſe and execute, and from henceforth ſhall have, perceive, take, uſe and execute, as of Right belonging to the Office of Keeper of the Great Seal, the ſame and like Place, Authority, Pre-eminence, Juriſdiction, Execution of Laws, and all other Cuſtoms, Commodities and Advantages as the Lord Chancellor lawfully uſed, had, or ought to have, uſe and execute, as of Right belonging to the Office of Lord Chancellor, to all Intents and Purpoſes, as if the ſame Keeper of the Great Seal were Lord Chancellor of *England*, *&c.* ſo that a Lord Keeper hath now all the Powers and Privileges of a Lord Chancellor.

After this Statute, which declares the Authority of the Lord Chancellor and Lord Keeper to be one; during a Vacancy upon the Death of Sir *Chriſtopher Hatton*, the Great Seal was delivered to Lord *Burliegh*, Lord Treaſurer *Hunſdon*, and Two other Lords; and a Commiſſion to hear Cauſes was given to Four Judges, *Clinch*, *Gaudy*, *Windham*, and *Periam*. *Hiſt. Chanc.* 70. And by 1 *W. & M. c.* 21. *Commiſſioners* appointed *to execute the Office of Lord Chancellor*, may exerciſe all the Authority, Juriſdiction and Execution of Laws, which the Lord Chancellor or Lord Keeper, of Right ought to uſe and execute, *&c.* ſince which Statute, this High Office hath been ſeveral Times in Commiſſion; though generally only on the Diſmiſſion of a Chancellor, 'till another was appointed: And

one Commiſſioner may hear Motions, *&c.* but not make Decrees.

Sometimes our Lord Chancellors and Keepers have been created out of the Nobility; tho' it is ſaid, that from the Reign of *Hen.* 2. when the famous *Becket* was Chancellor, down to the Time of King *Hen.* 8. the Office of Chancellor was executed by Eccleſiaſticks: Before the Reformation the Chancellor was uſually a Biſhop, and ſometimes the Great Seal hath been delivered to one of the King's Chaplains; inſomuch that there have been above One hundred and fifty Clergymen advanced to this Dignity: And until the 26 *Hen.* 8. all the *Maſters of the Rolls* were Churchmen, as Clergymen were then thought ſufficiently qualified for that Office, before the Buſineſs of the Court encreaſed; but afterwards, Men bred up in the Study and Practice of the Common Law, were made Judges of this High and Honourable Court. *Nelſon's Pref. to Chanc. Rep. Vol.* 3.

The *Qualifications* of a *Chancellor*, according to a learned Judge ought to be very great: Beſides the natural Faculties (ſays Sir *John Davis*) and Powers of his Mind, which he ought to have in great Perfection, he muſt be furniſhed with all Learning, that hath any Relation to the Publick Good; Divinity, Law, Policy, Morality, and eſpecial Eloquence, to impart and communicate all the reſt: He muſt withal have a long and univerſal Experience in the Affairs of the Commonwealth; and be accompliſhed in all Points of Gravity, Conſtancy, Wiſdom, Temperance, Juſtice, Piety, Integrity,

Integrity, and all other Virtues, fit for Magiſtracy and Government; yet ſo as the ſame be ſeaſoned and tempered with Affability, Gentleneſs, Humanity, and Curteſy, but without deſcending or diminiſhing himſelf, and ſtill retaining his Dignity, State and Honour: Briefly he muſt be a Perſon of ſuch Virtue and Worthineſs, as his Life may be a Cenſure, and his Example a Mirror for all other Magiſtrates. *Jus Sigil.* 13, 14.

He that bears this Chief Magiſtracy at this Day is ſtiled *Lord High Chancellor of Great Britain*, which is the higheſt Honour of the long Robe: He is made *per traditionem magni Sigilli ſibi per Dominum Regem*, and by taking his Oath, without any Grant or Patent for the ſame; for other Grant or Patent for this great Office there need not be, becauſe the Perſon to whom this Office is committed, hath the Keeping of the Great Seal in his Hands: When he hath received the Seal from the King, there is an Entry made upon the Cloſe Roll in the Court of Chancery, what Day, and in whoſe Preſence the Great Seal was delivered, which is all that is requiſite. 4 *Inſt.* 87. *Camd.* 180.

The Lord Chancellor's Office and Duty is included in general in the Oath that his Lordſhip takes upon the Delivery of the Great Seal to him; which Oath is as follows.

The

The Oath *of a Lord Chancellor or Keeper.*

'YOU ſhall ſwear, That well and truly 'you ſhall ſerve our Sovereign Lord 'the King and his People, in the Office of Chan- 'cellor, or Keeper of the Great Seal of *Great* 'Britain, whereunto you are admitted. And 'you ſhall do Right to all Manner of People, 'as well to Poor as to Rich, according to the 'Laws and Uſages of this Realm. And truly 'you ſhall Counſel the King, and his Counſel 'you ſhall lain (*i. e.* hide) and keep. And you 'ſhall not know, nor ſuffer the Hurt and Diſ- 'heriting of the King, nor that the Rights of 'the Crown be decreaſed by any Means, as far 'forth as you may let it. And if you may 'not let it, you ſhall make it clearly and ex- 'preſly to be known to the King, with your 'true Advice and Counſel therein. And that 'you ſhall do and purchaſe the King's Profit in 'all that you reaſonably may'.

So help you God, &c.

This great Officer is to ſee that all Things concerning the Court of Chancery be directed and diſpoſed according to his Advice: He may hold Plea as well *Extra Terminum*, as *Infra*, in Matters concerning either the ordinary or abſolute Juriſdiction; and if the Adjournment of a Term be, yet the Chancery ſhall not be thereby adjourned, becauſe it is always open, and a Man may have Proceſs out of this Court at any

Time. *Broke* 116. *Cromp. Juriſd.* 42. *Stat.* 4 *Edw.* 4. *c.* 21.

The Chancellor not only keeps the King's Great Seal, but all Patents, Commiſſions, Warrants, *&c.* from the King are peruſed by him before ſigned. To him it belongeth, *Ratione Officii*, to pronounce the Cauſe of Summons at the Beginning of a Parliament. And the Chancellor is to be preſent at all the King's Councils, and thither to repair uncalled. As often as the Place of any of the *Judges* is void by Death or otherwiſe, the King uſeth to chuſe one of the Serjeants at Law, and him by his Letters Patent to ordain a Juſtice in that Place; and then the Lord Chancellor ſhall enter into the Court, where the Juſtice is ſo wanting, bringing with him thoſe Letters Patent, and ſitting in the midſt of the Judges, cauſeth the Serjeant ſo elect to be brought in, to whom in open Court he notifies the King's Pleaſure touching the Office of the Juſtice then void, and cauſeth his Letters Patent to be openly read; which done, the *Maſter of the Rolls* ſhall read before the ſame elect Perſon, the Oath that he ſhall take, and when he hath taken it, the Lord Chancellor delivers to him the King's Letters Patent aforeſaid, and the Lord Chief Juſtice of the Court aſſigns unto him a Place in the ſame, *&c. Forteſcue de Laudibus Legum Angliæ, cap.* 51.

By Statute, it is ordained, That the Lord Chancellor being of the Degree of a Baron of Parliament, ſhall ſit and be placed on the Left Side of the Parliament Chamber, on the higher Part of the Form of the ſame Side, above all Dukes

Dukes and other Peers, (except ſuch as ſhall happen to be the King's Son, his Brother, Uncle, or Nephew or Siſter's Son): And if any Perſon which ſhall hereafter have the Office of Lord Chancellor, be under the Degree of a Baron, by Reaſon whereof he can have no Voice in Parliament, in ſuch Caſe he ſhall ſit and be placed at the uppermoſt Part of the Sacks, in the Midſt of the Parliament Chamber. 30 *Hen.* 8. *c.* 10.

To the Lord Chancellor belongeth the Conſtitution and Appointment of Juſtices of the Peace, and *Quorum*, by Commiſſion, throughout all *England*. *Lambert's Juſt. c.* 5. It belongs to him to viſit all Hoſpitals which are of the King's Foundation, or any of his Progenitors: And ſo alſo the Free Chapels of the King, or of any of his Royal Predeceſſors, no Ordinary ſhall viſit, but only the Chancellor of *England*. *Co. Lit.* 96. 344. He receives and keeps all Biſhopricks and Baronies void, and fallen into the King's Hands: And he has the Diſpoſal of all Eccleſiaſtical Benefices in the Gift of the Crown under 20*l.* a Year in the King's Books; which 'tis ſaid occaſion'd this Office to be formerly poſſeſſed by a Clergyman. *Plowd.* 528.

He may not only diſpoſe and order the King's Chaplains as he pleaſeth: But as Lord Chancellor may keep and retain three Chaplains attendant on his Perſon, who may purchaſe Licences or Diſpenſations to have and keep two Benefices with Cure of Souls. 22 *H.* 8.

And to the Chancellor's Office in Proceſs of Time great Authority hath been added, by divers Statutes; as by 31 *Ed.* 3. *c.* 5. 1 *Hen.* 5. *c.* 5. *c.* 9.

c. 9. 8 *Hen.* 6. *c.* 14. 33 *Hen.* 6. 4 *Hen.* 7. *c.* 12. 11 *Hen.* 7. *c.* 12. 19 *Hen.* 7. *c.* 7. 14 *Hen.* 8. *c.* 2. 21 *Hen.* 8. *c.* 6. 22 *Hen.* 8. *c.* 8. 25 *Hen.* 8. *c.* 15. 28 *Hen.* 8. *c.* 14 & 20. 33 *Hen.* 8. *c.* 1. 34 *Hen.* 8. *c.* 4. 37 *Hen.* 8. *c.* 12. 18 *Eliz. c.* 17, *&c.*

In his judicial Capacity, the *Chancellor* hath ſeveral *Aſſiſtants* and *Officers*, *viz.* The *Maſter of the Rolls*, the *Maſters in Chancery*, *&c.* And in Matters of Difficulty, he calls one or more of the Chief Juſtices and Judges to aſſiſt him in making his Decrees; though in ſuch Caſes, they only give their Advice and Opinion, and have no Share of the judicial Authority.

All Orders and Decrees in Matters of Equity are entred as made *per Cancellariam*, or *per Curiam*; tho' pronounced by the Maſter of the Rolls, or any of the Judges; but as beſides the ordinary Aſſiſtants, our Chancellors have formerly uſed to aſſociate to themſelves, Peers, Biſhops, Judges, *&c.* Some ancient Decrees have run thus: *Per Curiam Cancel. & omnes Juſticiar.* And ſometimes, *Per Decretum Cancel. ex Aſſenſu omnium Juſticiarior. & alior. De Concilio Regis preſentium*, *&c.* Hiſt. Chanc. 80, 81.

State of the Controverſy *between the* Lord Chancellor King *and Sir* Joſeph Jekyl, Maſter of the Rolls, *Anno* 12. Geo. 1.

IN Trinity Term 1726. a Book was publiſhed entitled the *Hiſtory of the Chancery*, and *Rights of the Maſters*, &c. on a Diſpute between the *Maſters in Chancery* and the *Maſter of the*

Rolls, relating to their ſigning his Honour's Decrees, which he had omitted to have done, and for Want of which they were ſtopt or ſuſpended by the Lord Chancellor; whereupon a warm Controverſy aroſe between the Chancellor and Maſter of the Rolls.

After the aforementioned Book, another Treatiſe came forth under the Title of *The Legal Judicature of the Chancery ſtated*, both which Books aſſert from ancient Records, Precedents and Authorities, That the Lord Chancellor is ſole Judge on the Common Law Side, and alſo of Equity in the Court of Chancery. That in the Chancery there are ſeveral Clerks and Officers under the Chancellor; and that particularly by the Conſtitution of the Court, there are twelve Miniſterial-Officers called Clerks or Maſters in Chancery; (whereof the Maſter or Clerk of the Rolls is one) who are Aſſiſtants to the Lord Chancellor, and ſubject to his Orders and Directions, and by him from Time to Time deputed and aſſign'd to do ſuch Buſineſs as the Exigency of the Court requires: And that the Maſter of the Rolls is no Judge either in Law or Equity in the High Court of Chancery; but whatſoever judicial Power he hath, is as one of the twelve Maſters of Chancery, or by Virtue of the King's Commiſſion. And further, that the Maſter of the Rolls hath two lawful Ways of exerciſing judicial Authority on the Equity Side of the Chancery; the one by immediate Commiſſion and Authority from the Crown, the other as an Officer of the Court, by Communication of Authority, and a dele-

Note that the firſt Edn. of this Diſcourſe on the Judicial Authority of Maſter of the Rolls was publiſhed before the Leg. Judicat. of Chanc. as indeed appears from the Title Page of Latter. p. 11.

a delegated Power from the Chancellor: Alſo that Decrees of the Maſter of the Rolls are ſign'd by the Lord Chancellor, and cannot be carried into Execution without him; and that in all decretal Orders made at the Rolls, there ought to be the Names of two Maſters of Chancery, who are to be preſent, aſſiſting, *&c.* That the Judging Matters of Equity is perſonal in the Chancellor, and he alone acts *Vice, Nomine & Loco* of the King; and though the Keeper of the Great Seal had in himſelf the Chancellor's judicial Power, by being Lord Keeper, yet until the Statute 5 *Eliz.* he was not generally taken to have the judicial Power of Equity, without a particular Grant from the Crown for that Purpoſe; and if the Keeper of the Great Seal had not Juriſdiction in Equity *Virtute Officii*, much leſs can the Maſter of the Rolls. That no Man can be Judge of a Court but by Authority from the Crown; or by Preſcription, which the Maſter of the Rolls hath not. And it would be a very odd Conſtitution, that the ſupreme Judge of the Court ſhould be always at the King's Will and Pleaſure, and a Judge under him be appointed for Life.

In *Anſwer* to all this, a Book entitled *A Diſcourſe of the Judicial Authority belonging to the Maſter of the Rolls*, was ſoon publiſhed, quoting the like ancient Records, Precedents and Authorities for its Support, wherein it is affirm'd that there are two Judges of the Court of Chancery; the Chancellor ſupreme, and the Maſter of the Rolls the ſubordinate Judge: That the Law inveſts the Maſter of the Rolls with

See the note in margin of p. 46. But the 2d. ed. of the book here referred to ſol-

lowed the Leg. Judic. of Chancery, & contained various additions with a full proof. E. H.

with a Juriſdiction, by Virtue of his Office, in Aid of the Juriſdiction of the Chancellor, not co-ordinate with it. That ſome Perſons obſerving that Maſters of the Rolls have been join'd with Judges and Maſters in Chancery, in ſpecial Commiſſions to hear and determine Cauſes in Chancery, have therefore entertain'd a ſuperficial Opinion that the Maſter of the Rolls hath no judicial Authority but what he derives from ſuch Commiſſion; which is contrary to Fact and Uſage: And that there is not the leaſt Foot-Step of any Delegation from the Lord Chancellor to the Maſter of the Rolls to hear Cauſes, to be found amongſt all the Memorials of the Court, *&c.* That ſome Hundreds of Decrees were made in the Times of the ſeveral Maſters of the Rolls, without the Names of any Maſters in Chancery; and the Chancellors have ſign'd the Decrees of the Maſters of the Rolls, as well without as with the Names of the Maſters; which have been chiefly added where Matters were referred to them by the Court, *&c.* and the Decrees founded on their Reports. That the Maſters of the Rolls acted judicially both in legal and equitable Proceedings, before any Commiſſion iſſued for that Purpoſe; and that they have acted in a Manner not warranted by ſuch Commiſſions when they ſubſiſted, which is enough to deſtroy them, *&c.* And before any Commiſſion, the Maſter of the Rolls was ſtyled *Vice-Chancellor*; as he exerciſeth judicial Authority *Vice Cancellarii:* And if he acted by a delegated Power only, the Chancellor might delegate not only any Maſter in Chan-

Chancery, but any Counſellor, or others, to hear Cauſes. That as one of the great Officers of the Crown, he hath a judicial Power; and that he hath demanded the Aſſiſtance of the Judges, who have ſate in Judgment with him; and he hath Power to vacate Records, *&c.* That the Lord *Chief Juſtice Holt* aſſerted a legal Neceſſity that the Cuſtody of the judicial Records ſhould be accompanied with judicial Authority. The ordinary Rules of the Court do not oblige the Maſter of the Rolls; whereas the ordinary Rules of every Court oblige all miniſterial Officers. And that the Six Clerks may preſent their Clients Cauſes ready for hearing, to the Lord Chancellor, or Maſter of the Rolls, as they think fit, to be heard, *&c.*

On this Controverſy and the ſeveral Pretenſions of the Chancellor and Maſter of the Rolls, ſet forth at large in the ſeveral Treatiſes, it is ſaid that the preſent Lord Chancellor hath ſent a Queſtion to my Lords the Judges, for their Opinion in this Matter, (as Matters of Juriſdiction are meerly points in Law, and proper for their Conſideration) but the Judges have not as yet given any Opinion on this nice Affair, or if they have, it is induſtriouſly concealed in Favour of the great Perſon againſt whom it is determined.

Of the Authority of the Maſter of the Rolls, Maſters in Chancery, Six Clerks and other Officers of the Court.

THE *Maſter of the Rolls*, formerly called *Guardein des Rolls*, *Clericus Rotulorum*, or *Clerk of the Rolls*, and now ſtiled in his Patent *Clericus parvæ Bagæ*, and *Cuſtos Rotulorum*, *&c.* is a very antient Officer, and his Office is grantable by Letters Patent, either for Life, or at Will, at the Pleaſure of the King; but at this Time is always for Life.

He is by Virtue of his Office the *Chief of the Maſters in Chancery*, as well as *Chief Clerk of the Petty-Bag*, and a judicial Officer of the Court of Chancery; for beſides what he doth as Aſſiſtant to or Aſſociate with the Lord Chancellor when preſent, or as Deputy to him when abſent, he hath alſo certain Cauſes aſſign'd him to hear and decree, which he uſually doth on certain Days appointed, being commonly aſſiſted by one or more Maſters in Chancery, either at his own Houſe or the Chapel of the Rolls; and all ſuch Orders and Decrees as are made by him, are drawn up and entered as made *per Curiam*, *&c.* But it hath been ſaid that the Maſter of the Rolls had no lawful Authority to be a Judge in Chancery in the Abſence of the Chancellor, unleſs he was thereunto authorized by ſpecial Commiſſion under the Great Seal. *Coke* 3. *Rep.*

He

He is Keeper of all Records, Judgments, Sentences and Decrees, given in the Chancery. In the Stat. 12 *R.* 2. *c.* 2. he is number'd amongſt the greateſt Officers and Magiſtrates of the Realm by the Name of *Clerk of the Rolls*, and before the Juſtices of either Bench, *viz.* It is Enacted, that the Chancellor, Treaſurer, and Keeper of the Privy Seal, the Steward of the King's Houſe, the King's Chamberlain, the Clerk of the Rolls, Juſtices of both Benches, *&c.* ſhall be called to the naming of Juſtices of Peace, Sheriffs, *&c.* and be ſworn to do the ſame faithfully, and without Affection. And by his Office he is a general Conſervator of the Peace throughout the Kingdom; but according to *Lambert*, he taketh Recognizances, and iſſues out Proceſs of the Peace, *&c.* not as incident to his Office, but by Preſcription. *Lamb. Juſt. lib.* 1. *fol.* 12.

This Officer is called by none of our Statutes *Maſter of the Rolls*, 'till 11 *Hen.* 7. *c.* 18. And though he is in that Statute ſo named, yet in the ſame Year he is called by the Name of Clerk of the *Rolls*, and by that Name takes an *Oath* in open Court, which Oath was appointed by Stat. 18 *Ed.* 3. and is as followeth.

The Oath *of the Maſter of the Rolls.*

'YOU ſhall ſwear, that well and faithful-
'ly you ſhall ſerve our Sovereign Lord
'the King and his People in the Office of Clerk
'of the Rolls in Chancery, to which you be
'attitled. And you ſhall not aſſent to, or pro-
'cure

'cure the King's Diſheriſion nor Damage; nor 'ſhall you do, or procure to be done any 'Fraud to any Man's Wrong, nor any Thing 'touching the keeping of the Great Seal. And 'you ſhall lawfully counſel in Things that 'touch the King, when you ſhall be thereunto 'required; and the Counſel which you ſhall 'know touching the King, you ſhall conceal. 'And if yon know the King's Diſheriſion, per-'petual Damage or Fraud to be done upon the 'Things which touch the keeping of the Seal, you 'ſhall put your lawful Power to repreſs and a-'mend it, and if you cannot do the ſame, you 'ſhall certify the Chancellor, or others which 'may do the ſame to be amended to your In-'tent.

As God you help, &c.

It appears by the Stat. 14 *Hen.* 8. *c.* 8. in the *Proviſo* of the Act, that the Maſter of the Rolls hath the giving and diſpoſing of the Offices of the *Six Clerks* in the Chancery; and he hath likewiſe the Appointment of the *Clerks of the Petty-Bag Office*, the *Uſher* of the Court of Chancery, *&c.*

Maſters of the Chancery.

THE twelve Maſters in Chancery, (of which the Maſter of the Rolls is Chief) are Aſſiſtants to the Lord Chancellor; and ought to be either *Barriſters at Common Law*, or *Doctors of the Civil Law*, and they ſit in Court with the Lord Chancellor or Maſter of the Rolls. According

According to the Lord *Chancellor Egerton*, the Maſters in Chancery formerly ſtiled *Clerks de prima forma*, are to be grave and antient Clerks; skilful and long experienced in the Practice of the Court: And by the ſpecial Appointment of Parliament theſe twelve Clerks, or Maſters, were made Coadjutors with the Chancellor, and had equal Authority with him in the forming the *Brevia Magiſtralia*; for unleſs they all agreed, they were to go to Parliament: But in all other Caſes, by the Conſtitution of the Court of Chancery, they are Aſſiſtants to, or as they were properly termed the Council of the Chancellor. They were antiently Members of the King's Court, and allowed Robes out of the King's Wardrobe, and dieted as a Part of the Houſhold, for whom ſpecial Purveyance was made; and as in Reſpect of their being Counſellors to the Chancellor, they have the Honour to ſit upon the Bench with him in open Court; ſo in Reſpect of their having been Members of the King's Court, they attend the Houſe of Lords, and have a Right to aſſiſt at the Coronation of our Kings. *Rot. Parl.* 10 *Ed.* 3. *Hiſt. Chanc.* 30, 32, 43.

The later Name of Maſters of the Chancery they retain at this Day, in Regard of their Gravity and Wiſdom: They likewiſe retain their antient Precedency before all other Clerks. And now a Recognizance, acknowledged before any of them, and certified under his Hand, is of that Authority that it is Matter of Record, and as effectual as if it had been acknowledged in open Court. All Deeds or Indentures, which are to be inrolled in Chancery, muſt be acknowledged

before them. They take or ſwear Affidavits, relating to the Proceedings of the Court: And every Defendant in any Bill exhibited againſt him in this Court, muſt make Anſwer thereunto upon Oath before one of them; except the Defendant live in the Country, that his Anſwer is taken by Commiſſioners. Alſo the Lord Chancellor refers Matters ready for hearing, generally Matters of Account and relating to the State of the Proceedings, *&c.* unto their Examinations, which according to their Reports or Certificates, are decreed accordingly. Their *Oath* is almoſt *Verbatim* the ſame with that of the Maſter of the Rolls.

The Oath *of a Maſter in Chancery.*

'YOU ſhall ſwear, that well and truly you ſhall ſerve our Soveraign Lord the King and his People, in the Office of one of the Maſters in Chancery, to which you are called. You ſhall not aſſent to, nor procure the Diſinheritance or perpetual Damage of the King to your Power: No Fraud ſhall you do, or cauſe to be done wrongfully to any of his People, nor any thing that toucheth the Seal. And lawfully you ſhall Counſel in the Things which touch the King, when you ſhall be thereunto required; and the Counſel that you ſhall give touching his Majeſty, you ſhall not diſcloſe. And if you know any Thing that toucheth the Diſinheriſion or Damage of the King, or Fraud to be done about any Thing that toucheth the keeping of the Seal, you ſhall put your lawful

'ful Power to redreſs and amend the ſame; 'and if that you cannot do it, you ſhall adviſe 'the Lord Chancellor, or Keeper of the Seal, 'or other which may amend the ſame, to your 'Power.

So help you God.

By the Stat. 13 *Car.* 2. a Publick *Office* is to be kept near the *Rolls*, for the *Maſters in Chancery*, in which the ſaid Maſters or ſome or one of them, ſhall conſtantly attend for the adminiſtring of Oaths, taking Captions of Deeds and Recognizances, and diſpatch of all Matters incident to their Office, (References upon Accounts, and inſufficient Anſwers only excepted) from Seven of the Clock in the Morning till Twelve at Noon, and from Two in the Afternoon until Six at Night. And their *Fees* are appointed by this Act; and Maſters receiving any greater Fees, on legal Conviction thereof, ſhall be diſabled to execute their Offices, and forfeit 100 *l.* beſides the Sum taken; one Moiety to the King, and the other to the Party grieved, who ſhall ſue for the ſame. *Tables of the Fees* are likewiſe to be ſet up in their Office, *&c.*

See more of their Buſineſs, under *References* and *Reports*, *Affidavits*, *&c.*

The Six Clerks in Chancery.

THE Six Clerks, next in Degree to the Twelve Maſters in Chancery, are of antient Continuance; unto whom it is ſaid belong'd the Drawing of all Patents, Commiſſions, Licences,

Pardons and Warrants that paſs the Great Seal of *England*, for which Reaſon they are called *Clerici Scribentes in Rotulis*, by certain Conſtitutions made for ordering the Court of Chancery, *Anno* 12 *R.* 2. Since which Time, the Reputation of their Office hath ſo much encreaſed, that they have been ſpecially aſſign'd amongſt other Officers to attend at the Time of the King's Coronation, as appears by the Records of the Herald's Office.

They are now principally concern'd in Matters of Equity; and their *Office* is kept in *Chancery-Lane* over-againſt the *Rolls*, wherein all Proceedings by *Engliſh* Bill and Anſwer unto the very Decree, and in ſome Caſes after the Decree, are tranſacted and filed: Alſo at this Day out of this Office are iſſued ſome Patents that paſs the Great Seal; as Pardons of Men for Chance-medley, Patents for Ambaſſadors, Commiſſions for Bankrupts, and ſome others. And altho' the Six Clerks are themſelves the proper Attornies of the Court, yet they have many Clerks under them, who do the Buſineſs of the Office, and account to them for the ſame, as the Entring Clerks and Attornies do to the Prothonotaries of the Courts at Common Law: Theſe Under-Clerks have Seats in the Office, and each Six Clerk has a certain Number as depending upon or belonging to his Office, *viz.* about Ten Clerks.

The Six Clerks are to give their Attendance on the Court, or making Default ſhall be fined 10*s.* apiece. And the Six Clerks at the End of every Term are to examine and make perfect the

the Attornies Tituling Books and Filing Books of Record and Pleadings. *Ord. Canc.* 42, 61. No Bill, Anſwer or other Pleading, ſhall be copied before filed, and the Hand of the Six Clerk thereto; and no Bill, Anſwer, Commiſſion, Decree, *&c.* is to be carried out of the Six Clerk's Office by the Under-Clerks to be ingroſs'd or copied: The Original Bills, Pleadings, *&c.* are to be preſently brought to the Six Clerk to whom the Cuſtody belongs, after they are copied; and within one Term after any Cauſe is determin'd, Decrees, Records, *&c.* ſhall be delivered to the proper Six Clerk to be kept. *Ord. Chanc.* 55, 56, 83.

And the receiving, filing, and keeping of Bills, Anſwers, Pleadings, and all Proceedings thereupon, and the making of all Copies, *&c.* was to be divided among the Six Clerks and their Succeſſors, according to the Letters of the *Alphabet*; when the Plaintiff's Sir-name begins with *A. B. C. D. F.* or *Y.* by two of the Six Clerks named; when it begins with *E. G. H. I. K. M. N.* or *O.* by other two of the Six Clerks named; and when with *L. P. Q. R. S. T. V. W.* or *X.* by the remaining two of the Six Clerks alſo named. *Ord. Canc.* 107.

But this Order for the dividing the Buſineſs amongſt the Six Clerks, being found to be inconvenient to the Suitors, was vacated and diſcharg'd; and all Clients are at Liberty to chooſe their own Attornies and Clerks, *&c.* by a ſubſequent Order. *Ord. Canc.* 157.

The

The Oath *of the Six Clerks in Chancery.*

'YOU ſhall ſwear, That well and truly you ſhall ſerve the King and his People, 'in the Office of one of the Six Clerks of Chan-'cery, whereunto you are now admitted; and 'well and juſtly order your ſelf in the ſame, and 'according to your Skill and Learning, truly 'Counſel them that you ſhall be retained with. 'And you ſhall not aſſent to any Fraud or De-'ceit to be had or done by you, or any other by 'your Conſent, in any of the King's Records 'whereunto you ſhall have Recourſe; but well 'and truly you ſhall entreat the ſame. And 'you ſhall not abſent your ſelf willingly where-'by the King's Buſineſs, or any other ſhall be 'undone or hindered, without ſpecial Licence 'of the Maſter of the Rolls for the Time be-'ing'.

So help you God, &c.

Under-Clerks to the Six Clerks.

All Copies of Proceedings in Chancery, written in Paper by the Under-Clerks, ſhall contain Fifteen Lines in every Sheet, writ orderly; and be ſigned with the Name of the Six Clerk to whom they belong, by himſelf or Deputy, or they ſhall not be made uſe of in Court. *Ord. Canc.* 83.

And Under-Clerks of the Six Clerks Office admitted to Practice, are to take an Oath for the faithful Diſcharge of their Offices: Their Number

ber is to be Ten in each Six Clerk's Diviſion, and Sixty in the whole. The Under-Clerks are alſo to be brought up in the Office, and ſerve Seven Years Clerkſhip, and be otherwiſe qualified; and no Under-Clerk ſhall be deprived or ſuſpended, but by Order of the Lord Chancellor, *&c. Ord. Canc.* 161.

By this Order, likewiſe the Fees for Copies of Bills, and Anſwers, Pleas, *&c.* and for Writs, Commiſſions and Exemplifications, are limited, as to be divided between the Six Clerks and Under-Clerks; and the Under-Clerks are to pay, and be accountable to the Six Clerks for their Fees, or give Notes of the Name and Place of Abode of Clients in Arrear, in their Diſcharge. *Ord. Ibid.*

The Order aforementioned is repeated by an Order ſubſequent; and Five Under-Clerks are ordered to be added to the Ten ſworn Under-Clerks in every Six Clerk's Diviſion: None ſhall ſit or write in the Six Clerk's Office, but the Six Clerks, and ſworn Under-Clerks, and their Clerks; and no Maſter of the Court is to deliver any Anſwer, Plea, *&c.* to any Perſon but ſuch Clerks; and no Six Clerk ſhall deliver any Bill, Anſwer, *&c.* to any Perſon but to a ſworn Under-Clerk, or his waiting Clerks; alſo no ſworn Clerk is to deliver any Bill, or Anſwer, *&c.* other than to his reſpective Clerks, for whom he ſhall Anſwer. *Ord. Canc.* 222, 223, &c.

No Clerks, *&c.* of this Court ſhall undertake Soliciting of Cauſes, on Pain of Suſpenſion, and Commitment to the *Fleet*. *Ord. Canc.* 256.

The Curſitors of the Court.

THE Curſitors of the Court of Chancery are Officers of very antient Inſtitution, for to them only it belongs to make out all original Writs, which are the Foundation of Proceedings at the Common Law. *F. N. B.* And theſe Curſitors are bound by the Duty of their Offices, to have Knowledge and Skill in the true Forms of original Writs, becauſe their Miſtakes ſhall not be accounted *vitia Scriptorum*, or Miſpriſions amendable by the Stat. 8 *H. 6. cap.* 12. 8 *Rep.* 159.

There are in Number Twenty-four, and were incorporated of themſelves by Queen *Eliz.* amongſt whom the Buſineſs of the ſeveral Shires or Counties of *England* is ſeverally allotted and diſtributed; into which they and their Under-Clerks make out and ſend ſuch Writs original of the *Chancery* returnable in the Common Pleas, as are required of them by the Attornies of the Courts at Law; and alſo all Writs of Entry and Covenant.

No Curſitor ſhall make out any original Writ of any Return paſt, not having Inſtructions in the Term the Writ is returnable, or on or before the Eſſoin-Day of the next Term, without ſpecial Warrant from the Lord Chancellor, *&c.* Nor ſhall any Curſitors of this Court make Writs of *Clauſum fregit*, *&c.* in *London*, without ſuch ſpecial Warrant, unleſs it appear by Affidavit that the ſame is the proper Cauſe of Action; and in other Counties they ſhall be

made out of the laſt Return of every Term, except it be in Caſes to warrant Arreſts. *Ord. Chanc.* 149.

They are called *Clerks of Courſe* in the Stat. 18 *Edw.* 3. and their modern Oath is as follows,

The Oath *of a Curſitor.*

'YOU ſhall ſwear, That you ſhall well 'and truly ſerve our Sovereign Lord 'the King and his People, in the Office of Cur- 'ſitor whereunto you are called. And that if 'you ſhall know any Fraud or Falſhood pro- 'cured or intended, to the abuſing of the Great 'Seal, or to the Damage or Prejudice of the 'King, you ſhall do your beſt to withſtand it; 'and that which you cannot of your ſelf help, 'you ſhall diſcover to the Lord Chancellor or 'Lord Keeper of the Great Seal for the Time 'being. And to the beſt of your Power you 'ſhall keep and obſerve the Ordinances made 'concerning ſuch Perſons as do or ſhall write to 'the Great Seal.'

So help you God.

The Regiſter of the Chancery, and his Deputies.

THE Regiſter in this Court, who is an Officer of great Note, hath ſeveral Deputy-Regiſters under him, who ſit in Court by turns, and take Notice of all Orders and Decrees made in the Court; and accordingly draw up the Orders, which are to be entred in his Office, and have the Regiſter's Hand to them. *Vide* Orders.

Regi-

Regiſters are not to enter in their Office any common Rule or Attachment, which iſſues from the Six Clerks Office, but by a Note under the Six Clerk's Hand that is Attorney in the Cauſe: And no Decree, Injunction, *&c.* ſhall be preſented by the Regiſter to the Lord Chancellor to ſign, without being ſigned by the Six Clerk. The Regiſters ſhall not enter any Plea or Demurrer in Paper, unleſs the Order or Warrant for it be brought to be entred at leaſt Two Days before the Day of Hearing ſuch Demurrer, *&c.* and afterwards no Alteration ſhall be made. Alſo a Note of all Cauſes, Pleas, Demurrers, Exceptions, *&c.* ſet down for Hearing, is to be ſet up by the Regiſters in their Office, Two Days before the ſame are appointed to be heard. *Ord. Canc.* 54, 56, 62, 196.

Minutes of Decrees, *&c.* taken by Regiſters, are to be read in open Court, that if there be any Miſtakes, the Counſel may ſpeak for rectifying them whilſt freſh in Memory, *&c. Ord. Canc.* 213.

The Reports of the Maſters are to be filed in the Regiſter's Office.

The Maſter of the Subpœna *Office.*

THE Maſter of the *Subpœna* Office makes out all Writs of *Subpœna*; and Under-Clerks in Chancery are not to make any Writs to examine Witneſſes, *Subpœna's*, *&c.* but the ſame ſhall be made out by the Clerk of the *Subpœna* Office. *Ord. Canc.* 85.

No *Subpœna*, or other Proceſs for Appearance, ſhall iſſue out of the Chancery or any Court in Equity, 'till after a Bill is filed with the proper Officer of the Court, (except Bills for Injunctions to ſtay Waſte, or Suits commenced at Law) and a Certificate thereof brought to the *Subpœna* Office, under the Hand of the Six Clerk, or other Clerk who uſually files Bills in Equity; for which Certificate he ſhall receive no Fee. Stat. 4 & 5 *Ann. c.* 16.

The Clerk of Affidavits.

THE Clerk of the Affidavits is an Officer of the Court, with whom are filed all Affidavits uſed in Court, without which they will not be admitted.

Affidavits of this Court are generally to be brought into the Office for regiſtring them, and there filed and regiſtred, before exhibited in Court, or produced to ground any Orders, Writs, *&c.* Likewiſe Copies ſhall be made by the Regiſter; and no Counſel, Clerk, *&c.* ſhall give any Affidavit in Evidence, that is not filed and regiſtred in the Affidavit Office. *Ord. Canc.* 9.

The Fees of the Affidavit Office are appointed, and a Table to be hung up of them. *Ord. Canc.* 35. See *Affidavit*.

The Examiners of the Court of Chancery,

THE Examiners of the Court of Chancery, are Officers who examine Witneſſes in Suits, take their Depoſitions, and make out Copies

pies of them. And there are Two of theſe Examiners, who in their Office near the Chapel of the *Rolls*, by themſelves or Deputies, take the Examinations upon Oath of the Witneſſes produced on either Side, after ſworn by a Maſter; and put their Anſwers made to Interrogatories, in Writing: And the Plaintiff, in any Cauſe depending in this Court, may examine his Witneſſes in Court, notwithſtanding he hath taken out a Commiſſion and not executed it; alſo by a former Order new Witneſſes may be examined in Court, after a joint Commiſſion executed in the Cauſe, at any Time before Publication. *Ord. Canc.* 39, 72.

All Parties concerned in examining Witneſſes, as much as in them lies, are to make full Proof before Publication paſſeth in the Cauſe; but if after hearing, upon Reference to a Maſter for ſettling an Account, *&c.* he finds any Points or Circumſtances needful to be proved to ground his Report upon, which are not fully proved, he may direct Interrogatories to ſuch Points only, and the Examiners ſhall thereupon examine the Witneſſes in Court, if they reſide within 20 Miles of *London*; or if farther off, they ſhall be examined by Commiſſion: And all Examinations in Court muſt be kept of Record, or they ſhall not be allowed. *Ord. Canc.* 155, 156.

No Copies of Depoſitions ſhall be made uſe of, either in Court or before any Maſter, in a Cauſe, but ſuch as are taken out of the proper Office and *ſigned*; and Perſons making out fraudulent Copies to the Prejudice of the Examiners, ſhall

ſhall be committed to the Fleet 'till the Examiner injured be paid his Fees, and 5 *l.* paid to the Poor, *&c.* and the Cauſe ſhall be put off: And the Examiners and their Deputies have liberty to inſpect all Books of Depoſitions read in Court, to ſee if they are duly ſigned. *Ord. Canc.* 76, 249.

In the Examiner's Office there are ſeveral ſworn Clerks, and none but ſuch Clerks ſhall make Copies of Depoſitions, *&c.* which are to be kept private in the Office, 'till Publication is paſs'd, *&c.*

The Oath *of the Examiners.*

'YOU ſhall ſwear, well and truly after 'your Cunning and Learning to execute 'the Office of one of the Examiners in the 'King's Court of Chancery, whereunto you are 'admitted. And you ſhall duly, juſtly, and 'equally examine their Cauſes that ſhall be 'committed unto you, without any Favour of 'any Perſon or Perſons to be had, or doing o-'therwiſe than ſhall of Right appertain con-'cerning the ſame. And you ſhall be atten-'dant as well to further the King's Buſineſs, as 'alſo the ſame Cauſes, from Time to Time 'as need ſhall require; and you ſhall not pub-'liſh or ſhew the Depoſitions you take to any 'Perſon, before Publication in the Court, with-'out the Warrant of the ſame Court.

So help you God, &c.

The Clerks of the Petty-Bag Office.

THE Clerks of the Petty-Bag, Three in Number, having Clerks under them, have great Variety of Buſineſs that goes through

their Hands; and it requires much Knowledge and Experience in Law Practice for the Management thereof.

This Office hath the making out of all Writs of Summons of Nobility and Burgeſſes to Parliament; and Commiſſions directed to Commiſſioners of every Shire for aſſeſſing of Subſidies, and Taxes, as appears by the Stat. 33 *H.* 8. *cap.* 22. All Patents of Cuſtomers, Gaugers, Controllers, and Aulnagers; *Conge d' Eſliers* for Biſhops, on their Promotion to any See; Writs of *Liberate* upon Extent of Statutes-Staple, and the Recovery of Recognizances forfeited, and all *Elegits* upon them.

All Offices that are found *poſt Mortem* are brought to the Petty-Bag Office to be filed: Here are entered all Pleadings of the Chancery concerning the Validity of any Patent, or other Thing which paſſeth the Great Seal; which Pleadings are in *Latin* according to the Courſe of the Common Law. And if any Queſtion ariſe about the Acknowledgment of any Deed, acknowledged in the Chancery before the Lord Chancellor, Lord Keeper, Maſter of the Rolls, or any Maſter of Chancery, it is to be here proſecuted. Alſo all Suits for or againſt any privileged Perſon in this Court, are brought and proceeded in only in this Office. And by the Clerks here, divers Things are tranſmitted from the Riding Clerk, and the Inrollment Office to the Chapel of the Rolls, *&c.*

The Clerks of the Petty-Bag, Clerk of the Inrollments, *&c.* ſhall bring into the Chapel of the Rolls all Inrollments, Inquiſitions, Records,

&c. to be there preſerved, on Pain of Sequeſtration of their Offices. *Ord. Canc.* 69.

The Oath *of a Clerk of the Petty-Bag.*

'YOU ſhall ſwear, That well and truly 'you ſhall ſerve the King and his Peo-'ple, as one of his Miniſters and Clerks in the 'Office of the Petty-Bag, whereto you are now 'admitted; and well and truly Order your ſelf 'in the ſame according to your Skill and Learn-'ing. And you ſhall be diligent to further the 'King's Buſineſs from Time to Time as need 'ſhall be or require; and you ſhall not Aſſent 'to any Fraud or Deceit to be had or done by 'you, or by any by your Conſent, in any of the 'King's Records whereunto you ſhall have Re-'courſe, but well and truly you ſhall entreat 'the ſame'.

So help you God.

Vide the Juriſdiction of the *Ordinary or Legal Court* in the Chancery.

The Clerks of the Rolls.

THE Clerks of the Rolls are thoſe Clerks who give their Attendance, and ſit conſtantly in the Rolls Chapel, to make Searches for Deeds, Offices, *&c.* and to make out Copies of the ſame.

The Uſher of the Court of Chancery.

THE Uſher of the Chancery had formerly the Receiving and Cuſtody of all Money ordered to be depoſited in Court, and paid it back again by Order, for which Purpoſe he attended on the Court: Though this Buſineſs hath been aſſumed by the Maſters in Chancery; and on their Miſmanagement, it is lately taken away from both the one and the other.

To the Uſher it belongs to have the Carriage of Records; and by Order of Court, he is to deliver Parchment of due Proportion to the Under-Clerks for Ingroſſing of Decrees, *&c. Ord. Can.* 23.

The Accountant General.

A New Officer appointed by Authority of Parliament, to receive the Money lodged in Court, inſtead of the *Maſters* and *Uſher*, and convey it to the Bank to be there kept for the Suitors of the Court.

The Accountant General ſtands in the Place of the Maſters and Uſher, and ſhall do all ſuch Matters and Things relating to the Delivery of the Suitor's Money and Effects into the Bank, and taking them out by Order, and keeping Accounts with the Bank, as by the *Orders of the Court of Chancery* of 26 *May*, and 4 *Nov.* 1725. are to be done by the Maſters and Uſher: And the Maſters and Uſher were to make up their Accounts with the Accountant General, and pay into the Bank all Money, *&c.* remaining in their Hands, to be placed to the Account of the Accountant

tant General; alſo Mortgages, Tallies, and Securities in the Maſters or Uſher's Name in Truſt for the Suitors, to be aſſigned to the Accountant General, *&c.* And Mortgages taken by the Direction of the Court, for the Benefit of the Suitors, ſhall be taken in the Name of the Accountant, wherein the particular Truſt is to be ſpecified; and the Accountant General ſhall not meddle with the actual Receipt and Cuſtody of the Suitors Money or Effects, but ſhall only keep the Account with the Bank; and the Bank is to be anſwerable for all Money received by them, and not the Accountant General, *&c. Stat.* 12 *Geo.* 1. *cap.* 32.

This Officer holds his Office during the Pleaſure of the Court; and the Court of Chancery hath Power to make further Regulations relating to his Office: Forging the Name of the Accountant General, *&c.* to any Certificate, in order to the receiving any of the Suitors Money, is made Felony. *Ibid.*

Additional Stamp-Duties on Writs, *&c.* as an Augmentation of the general or common Stock of the Court of Chancery, for the Benefit of the Suitors. See 12 *Geo.* 1. *c.* 33.

The Serjeant at Arms.

THE Serjeant at Arms is an Officer that attends the Lord Chancellor in this Court; he carries the Mace before him; and calls all Perſons before his Lordſhip, at his Commandment: There being but Two Ways to cauſe Perſons to make their Appearance, or come into

this Court, *viz.* either by *Subpœna*, or this Officer.

And to him any Perſons ſtanding in Contempt, are brought up by his Subſtitutes as Priſoners.

The Warden of the Fleet.

THE Warden of the *Fleet* is an Attendant on the Court of Chancery, to receive and take into his Cuſtody ſuch Priſoners as ſtand committed.

The Clerk of the Crown in Chancery.

THE Clerk of the Crown in Chancery is a great Officer wholly miniſterial, and is not employ'd in any of the Proceedings of Equity; for he is particularly appointed as Chief Guardian of ſuch Matters of the Crown as are tranſacted in this Court.

He continually attends the Lord Chancellor in Perſon, or by Deputy; and writes and prepares for the Great Seal, ſpecial Matters of State by Commiſſion, or the like, either immediately from his Majeſty's Orders, or by Order of his Council, as well ordinary as extraordinary, *viz.* Commiſſions of Lieutenancy, of Juſtices of Aſſiſe, *Oyer* and *Terminer*, Gaol-Delivery, and of the Peace, with their Writs of Aſſociation, *&c.* Alſo all General Pardons at the King's Coronation, or in Parliament, and ſpecial Pardons, with the Writs of Allowance thereupon; and into whoſe Office the Writs of Parliament, and the Names of the Knights of Shires and

and Burgeſſes elected thereon, are to be returned and filed; alſo he often attends the Houſe of Commons to amend ſuch Returns of Members as by their Orders are to be amended, *&c.*

And he makes out Writs of Execution on Bonds, of the Nature of Statutes-Staple, forfeited to the Crown upon the Act of 23 *H.* 8. *c.* 6. and this was annexed to his Office in the Reign of Queen *Mary*, in Conſideration of his continual and chargeable Attendance.

The Clerk of the Hanaper.

THE Clerk of the Hanaper, formerly called Warden of the Hamper, is an Officer of this Court, whoſe Office is to receive all Money due to the King for the Seals of Charters, Patents, Commiſſions, and Writs; as alſo the Fees due to the Officers for inrolling and examining of the ſame. He is obliged to Attendance on the Lord Chancellor every Day in Term-Time, and at all other Times of ſealing; having with him Leathern Bags, wherein are put all Writs, Patents, Commiſſions, *&c.* after they are ſealed with the Great Seal; which Bags being ſealed up by the Lord Chancellor or Lord Keeper, with his private Seal, are delivered by this Officer to the Controller of the Hamper, to be diſpoſed of by him as to his Office appertaineth.

This Hanaper, or Hamper, repreſents what the *Romans* term'd *Fiſcum*, which contained the Emperor's Treaſure.

The Controller of the Hanaper.

THE Controller of the Hanaper alſo attends on the Lord Chancellor in Term-Time, and on ſealing Days; and takes all Writs, Patents, or whatſoever elſe ſhall paſs the Great Seal from the Clerk of the Hanaper, ſealed up in the Leather Bags, (as aforementioned) which he afterwards opens, and counts the Number of the Writs, Patents, *&c.* therein, and having taken Notes of the Natures, Kinds, Qualities and Effects of what he ſo receives, he enters the ſame in a Book he keeps for that Purpoſe; together with all Duties belonging to the King, and ſuch Officers as are concerned therein; and then charges the Clerk of the Hanaper therewith.

The Clerk for inrolling Letters Patent.

THE Clerk of the Patents is an Officer at Common Law; for though it be not expreſſed in any Statute, that the King's Patents ſhall be inroll'd, yet ſo much is implied, as his Grants muſt appear by Record remaining in his Cuſtody, *viz.* in the Court, which cannot be, except they are inrolled: And in divers Statutes Mention is made, that Exemplifications ſhall be made of Patents, and this cannot be, unleſs the Patents were inrolled.

Vide Crompt. Juriſdict. del Courts, pag. 188.

The

The Clerk or Secretary of the Preſentations.

THE Clerk of the Preſentations is dependant upon the Lord Chancellor, for the making out all Preſentations of the Chancellor to Church Benefices in the King's Gift, under 20 *l.* a Year, and whereof the King is Patron in Right of the Crown; which Preſentations muſt paſs under the Great Seal.

But by the Stat. 22 *Edw.* 4. *c.* 18. it appears that it belongs to the Chancellor to preſent to all the King's Churches, under the yearly Value of 40 Marks; and the Chancellor's Authority in this Behalf, 'tis ſaid, is much enlarged by Grants and Patents of ſeveral of our Kings.

The Clerk of the Faculties.

THE Clerk of the Faculties is likewiſe an Officer under the Chancellor, touching whom it is provided by the Statute 25 *H.* 8. *c.* 20. entitled an Act for diſcharging of the King's Subjects from Exactions and Impoſitions heretofore paid to the See of *Rome*, &c. 'That 'no Manner of Diſpenſations, Licenſes, Faculties, *&c.* hereafter to be granted to any Perſons by Virtue of this Act, by the Archbiſhop or his Commiſſary, being of ſuch Importance, that the Tax for the Expedition thereof at *Rome* came to the Sum of 4 *l.* or above, ſhall in any ways be put in Execution, till the ſame Licence, Diſpenſation, or Faculty, be firſt confirmed by the King, his Heirs and Succeſſors, 'under

'under the Great Seal, and inrolled in the 'Chancery, by a Clerk appointed for that Pur-'poſe, *&c.*'

And at the End of the Statute is an Appointment of the Fees to be taken.

The Clerk of the Appeals.

THE Clerk of Appeals is an Officer appointed by the Stat. 25 *H.* 8. *c.* 19. By which Statute, it was Enacted, That for want of Juſtice in any of the Courts of the Archbiſhops of this Realm, *&c.* it ſhall be lawful for the Parties grieved, to appeal to the King's Court of Chancery, and that upon every ſuch Appeal, a Commiſſion ſhall be directed under the Great Seal, to ſuch Perſons as ſhall be named by the King, his Heirs or Succeſſors; in like Manner as in Caſe of an Appeal from the Court of Admiralty, to hear and definitively determine ſuch Appeals, *&c.*

The Clerk of the Commiſſion of Bankrupts.

THE Clerk of the Commiſſions of Bankrupts, to iſſue thoſe Commiſſions, ſeems to be purſuant to the Statute of 34 *H.* 8. *c.* 4. which impowers the Lord Chancellor to take Order with a Bankrupt's Body, Lands, and Goods, *&c.* And divers other Statutes.

There is alſo a *Clerk or Secretary of the Commiſſions of Lunacy*, &c.

Other

Other Clerks and Officers variouſly appointed.

AND beſides theſe, there are other Officers and Clerks belonging to this Court, whoſe Power is granted by the Chancellor's *Commiſſion* or Letter, and they are to attend the Lord Chancellor for particular Purpoſes, and on particular Occaſions; ſuch as the *Sealer of Writs*, &c. Others are granted by *Patent* from the King; as the *Clerks* for writing *Licences* of *Alienation*, Writs of *Licences* of *Protection*, and many others of the like Nature. And ſome are ordained by Parliament to be nominated and conſtituted by the King's Letters Patent; ſuch as the *Writer* and *Inroller* of Confirmations of all *Licenſes*, and *Diſpenſations* as ſhall be brought into Chancery under the *Archbiſhop of Canterbury*'s Seal, *&c.*

Fees of the ſeveral *Officers* and *Clerks* of the Court of Chancery. See *Table of Fees.*

The Privilege *of the Officers and Clerks of the Chancery.*

THE Officers, Clerks, and Attendants of this Court, that they may the better attend the Diſpatch of their Offices and Duties, claim a Privilege or Cuſtom of being ſued only in this Court and not elſewhere; which Cuſtom and Privilege, is ſaid to be confirmed by Parliament *Anno* 18 *Ed.* 3.

This Privilege belongs to all the Maſters, Miniſters, Officers, and known Clerks of the Court, and

and to their neceſſary menial Servants; who may, as the Caſe requires, be impleaded here, either as at the Common Law in the Petty-Bag Office, or in a Way of Equity by Bill: If any entitled to this Privilege be arreſted by the Proceſs of any other Court, he may have a *Writ of Privilege* containing an abſolute *Superſedeas*, *&c.* Alſo, if Suitors, or Witneſſes, attending the Court, be arreſted, they may have a temporary *Superſedeas* of Privilege for their Enlargement. But as to Officers and Clerks of the Court, they are to be certified by the Maſter of the Office where the Clerks write, *&c.* And thoſe as are Servants, muſt make Affidavit that they are menial Servants to ſome of the Maſters, Miniſters or Officers of the Court, or Privilege ſhall not be granted them; and the Writ of Privilege thereupon is to be allowed by the Lord Chancellor. *Ord. Canc.* 6, 7.

If a neceſſary Officer, ſuch as the Court of Chancery cannot be without, as Regiſter, Maſter of the Chancery, or the like, be in Priſon on Arreſt, the Chancellor may enlarge him; but if an Officer be in *Execution* for Debt or Damages, he ſhall have no Privilege, for then the Plaintiff would be without Remedy, if ſuch Officer were once at large. *Cromp. Juriſd.* 48. And if an Action be brought againſt Two Perſons, where one of them only hath Privilege, his Privilege ſhall not be allowed: So if the Husband hath Privilege in the Court of Chancery, it will not ſerve for his Wife; though a Servant of a Servant ſhall have Privilege, as a Servant immediate to the Lord Chancellor, *&c.*

But

But a Man's Wife is not properly a Servant. 9 *Edw.* 4. 35 *H.* 6. 3. *Dyer* 377.

An Officer or Clerk of this Court being arreſted in *London*, or other Place, he ſhall have a Writ of Privilege, with a *Superſedeas* in it, commanding the Mayor, *&c.* to ſurceaſe, and the Plaintiff *Quod Sequatur in Curia ubi, &c. ſi voluerit*, in which no *Procedendo* ſhall be awarded to the inferior Court: But it is otherwiſe where the Party arreſted had Privilege by reaſon of a Suit depending in a ſuperior Court for or againſt him, and that is the only Cauſe of his Privilege. 31 *H.* 6. 13. *Dyer* 287. A Defendant was arreſted at the Plaintiff's Suit as he came to put in his Anſwer, and impriſoned, and after ſeveral other Actions were charged upon him; but they were all diſcharged, it being done in Breach of the Privilege of this Court. 11 *Car.* 1. 23, 37. 1 *Chanc. Rep.* 92. A Plaintiff coming up to this Court, Half a Year after his Bill was exhibited, was arreſted in *London*, and had his Privilege allowed him, it appearing that he came up only for the following of his Suit. Alſo a Plaintiff arreſted here, when he came up to examine his Witneſſes, was diſcharged by *Superſedeas* of Privilege. 1 *Chanc. Rep.*

One of the Clerks of the Chancery was ſued in Action of Debt to the Exigent in the *Common Pleas*; and then he obtained a *Superſedeas quia improvide emanavit*, directed to the Sheriff, and afterwards brought his Writ of Privilege directed to the Juſtices of *C. B.* requiring them to ſurceaſe; and upon a long Debate his Privilege was diſallowed, and he was forced to Anſwer:

For the Court was lawfully poſſeſſed of the Plea, inaſmuch as he had by his *Superſedeas* affirmed the Juriſdiction of the Court, the *Superſedeas quia improvide, &c.* always reciting the Defendant's appearing in Court by Attorney, and ſhews his Name, ſo that this is merely his own Fault; but if he had not ſued out that *Superſedeas*, the Court notwithſtanding the Exigent, would upon bringing his Writ of Privilege to them, have allowed it, and granted a ſpecial *Superſedeas* of the Outlawry to the Sheriff. *Dyer* 33.

If a Clerk of this Court ſues out an *Attachment of Privilege* againſt any other Perſon, whereby the Defendant is in Execution thereupon; yet it is ſaid a *Capias ad ſatisfaciendum* will not lie for ſuch Clerk againſt the Defendant, becauſe no *Capias ad ſatisfaciend.* doth lie upon ſuch Attachment of Privilege, only where Proceſs of Outlawry lies upon the Firſt *Capias*, and here the firſt Proceſs is not a *Capias*: *Sed Quære*; for if a Man be condemned upon a Recogniſance, Execution againſt his Body will lie. *Dyer* 192, 306.

Our Chancellors have often declared, That no Clerk or Officer of the *Exchequer* is privileged againſt a *Subpœna* of the Court of Chancery; and ſeveral Pleas of Officers there, as Regiſter, Receiver, *&c.* have been over-ruled. A Defendant having pleaded the Privilege of the Court of Exchequer, and that he ought not in Reſpect thereof to be drawn to anſwer the Plaintiff's Bill in this Court, although the conſtant Precedents were to the contrary; the Court ordered

ordered the Defendant to ſhew Cauſe why the Plea ſhould not be over-ruled: On which the Defendant produced a Precedent in *16 Eliz.* But the Lord Keeper ſaid, He had heretofore ſeen that Precedent; and had alſo ſeen very many Precedents in this Court to the contrary, and however it were in Point of Precedent, as the Defendant's Plea was inſufficiently pleaded, Therefore, and for that neither by Law nor by any Precedent, any more than one Plea is to be admitted to the Juriſdiction of a Court, he ordered the Defendant to anſwer the Bill. *9 Car.* 1. 135. 1 *Chanc. Rep.* 69, 70.

A Defendant to a Suit in Chancery refuſed to anſwer the Bill of the Plaintiffs, becauſe he was an Inhabitant of the *County Palatine* of *Lancaſter*, and as ſuch ought to be ſued there: but it was over-ruled, the Plaintiffs in this Caſe being Servants and Miniſters of the Court, and as ſuch entitled to Privilege to ſue here. *Cary's Rep.*

Privileged Perſons have their Writs ſealed without Fee: And there is a Privilege which extends to the *Office*, as well as perſonal Privilege; for the Profits of the Office belonging to an Officer of this Court, ſhall not be extended upon any Statute, or the like, becauſe a Man ſhall never have any Thing extended on any Execution, unleſs he may grant and aſſign over the ſame Thing; but an Office cannot be granted, becauſe the Party that is the Officer is but a Servant to the Court, to do the Buſineſs and Service thereof, and not his own Buſineſs; and it is an

Office

Office of Truſt, which is not transferrable to a Stranger, *&c. Dyer* 7.

If a Sheriff's Officer refuſes to allow, or diſobeys a Writ of Privilege; or requires Bail before he will diſcharge the Party, it is a Contempt for which many have been committed to the *Fleet* Priſon: And on the other Hand, if a privileged Perſon of this Court, will untruly ſurmiſe, That one who is impleaded in another Court is his Servant, and thereupon procure for him a Writ of Privilege to ſuperſede the Action, whereby the Plaintiff in that Court is delay'd, Action of the Caſe will lie for the Plaintiff againſt ſuch Officer. 24 *Edw.* 4. 22.

Such as have the Privilege of this Court, have ſometimes a *Superſedeas* of Privilege granted to them as a Protection; the moſt extenſive of which Sort is that which contains both an *Injunction* and a *Superſedeas*, and is directed to all and ſingular Judges, Sheriffs, *&c.* enjoining them not to moleſt, or vex a Clerk of one of the Six Clerks of this Court in his Privileges, nor to force him to appear or anſwer before any Judge, *&c.* ſave of this Court, upon any Plaint, Plea, Treſpaſs, or Demand, which concerns not the King's Perſon, (Pleas of Freehold, Felonies and Appeals only excepted) nor to impanel him on Juries, or chuſe him into any common Pariſh-Office; and if any Diſtreſs hath been made upon him on any ſuch Account, without Delay to releaſe and diſcharge it, *&c.*

Of PROCEEDINGS *in the* PETTY-BAG OFFICE, *by and againſt privileged Perſons, and on Recognizances, Statutes, &c.*

AS the ordinary or legal Court of Chancery, govern'd by the Rules of the Common Law, is allow'd to be the moſt antient, tho' its Buſineſs be not ſo extenſive as that of the extraordinary Court of Equity, I ſhall begin with an Account of the Latin Proceedings of this Court in the *Petty-Bag Office*. And theſe Proceedings may be had and made Uſe of in all thoſe Caſes as are mentioned in my Accounts of the Juriſdiction of the Ordinary Court of Chancery, and of the Clerks of the Petty-Bag: But the general Uſe of them is in Caſe of Proſecutions by and againſt the Clerks and Officers of the Court, of whoſe Privileges I have juſt now treated; and of Recognizances, and Statutes Staple, *&c.* wherefore thoſe only are mentioned in this Place.

The Method of *ſuing a privileged Perſon*, in the Petty-Bag Office, is thus: *Firſt* a Declaration is delivered, in Debt or other Perſonal Action, as the Caſe is, to one of the Six Clerks, whom the Plaintiff makes his Attorney in the Cauſe, who thereupon giveth a Day (as it is commonly term'd) which is a Week, *viz.* the whole next Return, to the Defendant to anſwer, which Day is entered in the Six Clerks Coſts-Book, and alſo in the Petty-Bag Office, in

this Manner. — *Read verſ. Page, Cleric. Dies datus à Die Scti. &c. placit. Debiti & Privileg'.*

A Day being given to anſwer, the Declaration under the Hand of the Six Clerk or Attorney is to be ſent over to the Petty-Bag, by one of the Attorney's Clerks in the Six Clerk's Office; which Declaration is briefly entered by one of the Clerks in the Petty-Bag Office, with the Day that is given the Defendant to anſwer, on a Roll there called *Rotulus Rememorationis parvæ Bagæ*; at which Day, by the Courſe of the Common Law, if the Defendant plead not, he is forejudged the Court: But of late it is uſual to allow the Defendant a Day of Imparlance, *i. e.* Day 'till the next Return, after the Return already given him to anſwer; which is done as follows: The Defendant appearing, and having retain'd one of the Six Clerks, he imparleth for him, by entering the ſame in the Six Clerk's Coſts-Book, thus—— *Read verſ. Page, Li. Lo.* (i. e. *Licentia Loquendi*) *dat' eſt, in Craſtin. Animarum*; and then it is ſent over into the Petty-Bag to be entered in the aforeſaid Roll next under the Declaration.

When the Day of Imparlance is paſt, another Day (commonly five Days after) is given by the Plaintiff's Attorney, and entered in the Petty-Bag as aforeſaid for the Defendant to plead, or elſe Judgment to be entered againſt him; and this Day is called the *Peremptory Day*: If the Defendant pleads at the Day, his Plea is delivered by his Attorney to the Plaintiff's Attorney;

torney; and then if the Plaintiff will proceed to Trial, he is to join and make up the Iſſue, if he may do it, (for in ſome Caſes he cannot) or the Plaintiff is to reply, and give the Defendant a Day, *viz.* a whole Term, to join Iſſue, which Day is to be given and entered as the Day of Anſwer; and if the Defendant by that Day joins not up the Iſſue, Judgment is entered by *Nihil dicit.* It is to be obſerv'd, that after a Peremptory Day given, the Defendant cannot pray *Oyer* of the Bond and Condition, or ſuch like, as has been formerly ſometimes uſed for meer Delay: If the Iſſue be join'd, and the Record made up either by the Plaintiff or Defendant, it is ſent into the *King's Bench*, or *Common Pleas*, to be tried as an Action at Iſſue in that Court; and upon Judgment there, Execution is thereupon awarded in that Court. But if the Defendant neglect or refuſe to imparl at the Day given him to anſwer; or to plead, *&c.* then Judgment is enter'd againſt him, and Execution thereupon awarded here.

Upon Judgment, either by Default, or *Nihil dicit*, ſome of theſe Writs of Execution are here awarded, *viz.* If the Action be for Debt, the Plaintiff may have an *Elegit*, by the Stat. *Weſtm.* 2. or a *Levari facias*; and if the Plaintiff cannot levy his Debt and Damages by thoſe Writs, he may have a *Capias ad Satisfaciend.* either for all, or ſo much as reſteth unſatisfied. The Judgment being ſatisfied, the Plaintiff by himſelf or his Attorney (if the Defendant deſires it) doth acknowledge Satisfaction upon the Judgment in the Petty-Bag Office. And *Note*,

that whatever is done in the Six Clerks Office throughout the whole Proceedings, and by them entered in their Books, is of no Effect, except the ſame be entered in the Petty-Bag Office alſo.

If a *privileged Perſon be Plaintiff in a Suit* proſecuted againſt another, this Courſe is to be followed: The Defendant being arreſted by an Attachment of Privilege, muſt retain one of the Six Clerks for his Attorney, as aforeſaid; and put in Bail according to the Courſe of the Court, (and four ſufficient Sureties or Subſidy-Men have been required in theſe Caſes, tho' the Debt hath been never ſo ſmall) which Bail are bound for the Defendant's Appearance in Court from Day to Day, until the Cauſe is determined, and to ſatisfy the Plaintiff all ſuch Sums of Money as he ſhall recover againſt the Defendant by reaſon of his Suit: And after Bail put in, the Plaintiff (being privileged) puts in his Declaration, and gives a Day to anſwer, *&c. ut ſupra*, and the Pleadings and Proceedings are the ſame as thoſe before directed, where the Suit is againſt a privileged Perſon.

And if Judgment be given for a privileged Perſon in this Court, he may take out Execution as before is ſhewn; or he may then have a *Scire facias* againſt the Defendant and his Manucaptors, upon the Bail: And thereupon, if Judgment be upon the ſaid *Scire facias* in the Chancery, then is Execution awarded there; but if it be upon an Iſſue joined, and ſent into the King's Bench, *&c.* and on a Trial there, in ſuch Caſe Execution is there awarded; And upon Satisfaction of the Debt and Damages, the

Bail

Bail is to be diſcharg'd on the Acknowledgment of Satisfaction, *&c.*

If either the Plaintiff or Defendant, upon a Declaration of Privilege, or *Scire facias*, Demur in Chancery, the *Demurrer* being joined, a Day is ſet down by the Lord Chancellor for the arguing of it before him: And if on the Argument it fall out to be a *Reſpondeas Ouſter*, Judgment is entered thereon; and if it be againſt the Defendant, Execution is awarded; and if againſt the Plaintiff, then it is enter'd *Nil capiat per Billam.*

But if it be a *Reſpondeas ultra*, the Defendant is to pay Coſts, and a Day is given him to plead peremptorily, or Judgment to be entered.

An *Attachment* of Privilege.

GEorgius, *&c. Vic.* W. *Salut. Præcipimus tibi quod Attach.* A. B. *ita quod eum habeas cor. nob. in Canc. noſtra in diem, &c. ubicunque tunc fuerit ad Reſpondend.* C. D. *un' Cleric.* E. F. *Arm. unius ſex Cleric. dictæ Cur. noſtr. in Placit. deb'i Et ad faciend. ulterius & recipiend. quod dict. Cur. noſtr. Conſideraver', &c.*

A *Superſedeas* on an Attachment.

GEorgius, *&c. Vic.* W. *Saltm. Licet nos nup. per Brev. noſt. tibi Præcepimus quod Attach.* A. B. *ita quod eum haber. coram nobis in Canc. noſtr. ad certum diem in dict. Brevi noſtro content. ubicunque tunc foret ad Reſpond. nobis tam de, &c. quam de aliis quæ ſibi tunc*

& ibid. objicerent & ad fac. ulterius & recipiend. quod dict. Cur. doſtr. Conſideraver. in ea parte prout per Breve præd. apparet. Quibuſdam tamen certis de Cauſis nos ad preſen. ſpecialit. moven. tibi præcipim. quod omnem Executionem Brevis noſtr. præd. quamcunque per te in aliqua faciend. Superſedeas *omnino, Et ſi ipſium* A. B. *prætextu Mandati noſtr. præd. Ceperis aut ipſum in Carceribus Manucapt. tenes tunc ipſum* A. *à Priſona qua ſic detinetur ſi ea occaſione & non alia detineatur in eadem ſine dilatione deliberari fac'.* Teſte, *&c.*

The Method of ſuing out a Recogniſance *in Chancery.*

ONE of the beſt Securities we have in this Kingdom for Debt, is a *Recogniſance in Chancery*, which is acknowledged before a Maſter of the Court, and ſign'd by him, and afterwards inrolled at the Inrollment Office, *&c.*

To ſue out ſuch a Recogniſance, if the Money be not paid at the Time agreed; firſt a Copy of the Recogniſance is brought to one of the Clerks of the Petty-Bag Office, and thereupon, if you require it, he will make out two Writs of *Scire facias*; one of a Return paſt, and the other of a Return to come: Theſe Writs are to be delivered to the Sheriff of *Middleſex*, who will return them as the Law directs; and when the Writs are return'd, they muſt be carried again to the Petty-Bag, and the Party is to retain one of the Clerks there to be his Attorney therein; and then give the Defendant

dant a Day to appear, which if he do not accordingly, Judgment is to be awarded againſt him by Default. If the Defendant do appear on the Day given, the Plaintiff muſt declare againſt him by his ſaid Attorney, and the Defendant is to anſwer and plead to the Plaintiff here as is uſual in the Courts of Common Law.

But when the Parties are at full Iſſue, they are at the furtheſt of their Proceedings in Chancery; for then if they go to Trial, the whole Proceeding in the Petty-Bag Office is to be written on Parchment, and muſt be either ſent by the Officer of the Petty-Bag ſealed up to be tried in the *King's Bench*, or the *Common Pleas*, or it may be delivered over unſealed by the Lord Chancellor *propria manu*, *&c.* as there can be no Trial by Jury in Chancery.

Theſe Recogniſances in Chancery are drawn after this Manner, *viz.*

A Recogniſance in Chancery.

A. B. *de*, *&c. coram Domino Rege in Cancellar. ſua perſonalit. conſtitut. Recogn. ſe debere* C. D. *de*, *&c. Centum librar. bonæ & legalis Monetæ Magn. Britan. ſolvend. eidem* C. D. *aut ſuo certo Attorn. Executor. Adminiſtrator. vel Aſſign. ſuis in Feſto Sancti*, *&c. poſt dat. hujus Recognitionis*; *Et niſi ita fecerit, vult, & concedit pro ſe Hæred. Executor. & Adminiſtrator. ſuis, quod dicta ſumma Cent. libr. levetur & recuperetur de Maneriis, Meſſuagiis, Terris, Tenementis, Bonis, Catallis & Hæreditamentis ipſius* A. B. *Hæred. Executor. vel Adminiſtrator.*

miniſtrator. ſuorum ubicunque fuerint invent. per præſentes, ad ſolum opus & uſum præfat. C. D. *Executor. vel Adminiſtrator. ſuorum*; Teſte *dict. Dom. Rege apud Weſtm. die, &c. Anno Regni Domini noſtri* Georgii, *Dei Gra. Magn. Britan. Franc. & Hibern. Regis Fidei Defenſor. &c. Duodecimo, Annoque Dom.* 1726.

The Manner of ſuing a Statute-Staple.

THE Way of Proceeding in this Caſe is, to go firſt to the Clerk of the Staple with your Statute, and ſhew him the Date thereof when it was acknowledg'd, which will appear by the Statute; and then the Clerk of the Staple will make your Certificate thereupon, and ſeal it up; which Certificate is to be carried to the Clerk of the Crown in Chancery, and being given to him, he makes out the Exigent therein, and your Obligation, and the Extent is to be made and indorſed on the Backſide: This Indorſement of the Extent is called the *Fine of the Extent*, which muſt be delivered to the Sheriff of the County, who is to impanel a Jury of Inquiry, to extend the Lands, Goods and Chattels, and alſo apprehend the Body of the Party ſo bound; and when the Sheriff hath extended them into the King's Hands, you are to deliver up the Statute to one of the Clerks of the Petty-Bag Office, who will make out a *Deliberate* to the Sheriff for Delivery of the Goods, *&c.* to the Party proſecuting; and ſo this Proſecution ends.

Before

Before you ſue out the *Deliberate*, it is cautionary to be well inform'd, whether there be Eſtate or Goods extended ſufficient to anſwer the Statute; for after the *Deliberate* is taken forth, you ſhall never have more than what was firſt extended: And therefore in caſe there be not ſufficient, if any other Lands or Goods can be found in any other Place than where at firſt you extended, thoſe may be extended likewiſe, until there be enough to pay the Debt; and when you are ſure there is ſufficient, and not before, then deliver up the Statute and take out your ſaid Writ of *Deliberate*, *&c.*

If an Infant acknowledge a Statute or Recogniſance, it is voidable by *Audita Querela* during his Minority. And if a Cogniſor, after he hath enter'd into a Statute, *&c.* doth convey away his Lands to divers Perſons, and the Cogniſee ſues Execution upon the Lands of ſome of them, and not all; in this Caſe, he or they whoſe Lands are taken in Execution, may by an *Audita Querela*, or *Scire facias*, have Contribution from the reſt, and have all the Lands equally and proportionably extended. *Plowd. Com.* 72.

Audita Querela ſuper Bail.

A Man taken in Execution upon a Statute-Staple or Judgment in the Chancery, having good Cauſe to avoid the Execution, the Courſe is by Petition to ſignify to the Lord Chancellor his Cauſe, and ſometimes the Lord Chan-

Chancellor or Keeper hath required a Certificate under the Hands of the Plaintiff's Counſel, of good Account in the Law, of the Point ſpecified in the Petition; and thereon the Chancellor doth appoint ſome Maſter of the Chancery to take ſufficient Bail according to the Courſe of the Court, of which he ought to have great Care, becauſe the Statute and Judgment are thereby awarded, and the Plaintiff diſcharg'd; ſo that if it happen upon the Trial to go againſt the Plaintiff in the *Audita Querela*, the Defendant therein hath no Remedy but againſt the Bail, which if they be inſufficient the Defendant loſeth his Debt, *&c.*

The Proceedings to Trial, *&c.* are in the Petty-Bag Office.

Traverſe of Office and Monſtrans de droit.

ON an Office found, after the Death of the King's Tenant, the Tenant or any other grieved thereby, upon a Bill of Complaint exhibited, is licenſed to traverſe or ſue a *Monſtrans de Droit*; which being drawn and ingroſs'd is delivered into the Petty-Bag, and the Traverſe or *Monſtrans de droit* the King's Attorney General oftentimes upon Sight of Evidence doth confeſs to be true, and thereupon an *Ouſter le maine* is awarded, *&c.* Or if the Attorney General will plead thereto, and thereupon Iſſue is joined, then a Record of the whole and a *Venire facias* thereupon is ſent into the *King's Bench*, to be tried and determined there.

Quare,

Quære, whether this ancient Practice be not alter'd or taken away by the Stat. 12 *Car.* 2. for taking away Tenures, *&c.*

Habeas Corpus ad Satisfaciendum.

IF a Perſon be a Priſoner in any Priſon, and a Man hath a Judgment in Chancery, or a Statute to charge him with, he ſhall have a *Habeas Corpus* mentioning the Judgment or Statute returnable in the Chancery, by Virtue whereof he ſhall be brought into the Court, or before the Chancellor or Keeper, and upon ſhewing forth the Statute or Record of the Judgment, the Priſoner ſhall be committed to the *Fleet* in Execution alſo for the ſame, if he cannot ſhew good Cauſe to the contrary, as a Releaſe, *&c.* all which is entered in the Petty-Bag.

There is likewiſe a *Habeas Corpus*, for bringing into Court, the Body of a Perſon ſtanding out in Contempt, to anſwer, *&c.* and for ſetting at Liberty of one wrongfully impriſoned.

Vide *Writs* and *Proceſſes*, *&c.* in the *Chancery*.

Of

Of Affidavits, Petitions, Motions, References, Reports, Orders, &c. and of Suits in Forma pauperis.

IT may be expected, that I ſhould now come to Proceedings by *Engliſh Bill and Anſwer* in the extraordinary Court of Equity in Chancery, as proper to follow the Buſineſs and Tranſactions of the Common Law Court; but the ſmaller Buſineſs of *Affidavits*, *Petitions*, *Motions*, *References*, *Reports*, *Orders*, *&c.* being in many Things preparatory to thoſe larger Proceedings, I think it is neceſſary firſt to treat of theſe, and the Practice concerning the ſame.

Affidavits *in the Court of Chancery.*

AFfidavits are uſed for certifying the Service of the *Proceſs* and *Orders* of the Court, or ſomething relating to the ſame, or other Matters touching the Proceedings in the Cauſe; and generally where any Motion is made, which is not of Courſe, an Affidavit muſt be read in Court of the Facts alledged: And *Interlocutory Orders* in Chancery, ſuch as are made after the Bill filed, and before the Decree, and which do not determine the Right of the Matter in Queſtion, are uſually grounded upon Affidavit made of ſome Matters of Fact ariſing after the Suit commenced, and evidenced to the Court either by *Motion* or *Petition* with the Affidavit annexed.

The

The Plaintiff or Defendant may make an Affidavit in a Cauſe or Suit depending; which is to be ſworn before a Maſter in Chancery in Town, or before a Maſter extraordinary in the Country, where 20 Miles off from *London*; and every Maſter extraordinary at the Bottom of the Affidavit is to expreſs the Name of the Town and County where he takes it, or it ſhall not be authentick. But no Affidavit ſhall be permitted to be read in Evidence at the Trial of the Cauſe, tho' it ſhall be made Uſe of and read in Court upon Motions; for an Affidavit ſhall not be taken tending to the Proof or Diſproof of the Title and Matter in Queſtion, or touching the Merits of the Cauſe, nor ſhall any ſuch Matter be craftily inſerted in any Affidavit of the Service of Proceſs, *&c. Ord. Chanc.* 148.

An Affidavit of ſeveral Perſons, by the Manner of wording it, may be made either joint or ſeveral, or joint and ſeveral; and there is great Nicety and Exactneſs required in the Drawing of Affidavits. Affidavits are to be fair and legibly writ in one Hand, without blotting or interlining of any Words of Subſtance; otherwiſe a Maſter ſhall not accept it; or if he paſſes the ſame ſo blotted or interlined, the Regiſter of Affidavits or his Deputy may refuſe it, and no Uſe ſhall be made thereof in any Proceedings in this Court. Alſo Maſters of Chancery in the taking Affidavits, are to be circumſpect and wary, that they be reverently and knowingly taken; they muſt adminiſter the Oath them-

themſelves, and where they diſcern the Party to be raſh or ignorant, give him ſome Admonition of his Duty, and be ſure he underſtands the Matter contained in his Affidavit; and he is to read the ſame over, or hear it read, and ſubſcribe his Name or Mark thereto, before the ſame be certified or ſigned by the Maſter. *Ord. Chanc.* 15, 18, 92, 146.

Affidavits ſhall be filed in due and convenient Time after Swearing, and before any Uſe made thereof in Court, as well to prevent Trouble to the other Party by going often to enquire for them, as that he may by his Counſel inform the Court of any juſt Exception he may have againſt the ſame: And if any Affidavit is made to ground a Motion upon, it muſt be filed the Night, at leaſt, before the Motion, that ſo the other Side may have Time to take a Copy, *&c.* If the Party for whom made expects his Order thereon to be abſolute. Affidavits before they are read in Court, or made Uſe of to found any Proceſs, Orders, Commiſſions or Proceedings thereupon, ſhall be filed in the *Affidavit Office*, and atteſted by a true Copy thereof, under the Hand of the ſworn Regiſter, or his Deputy; and 'till then the Six Clerks, Curſitors, Regiſters, and their Clerks, *&c.* ſhall not make or paſs any Writs, Orders, Commiſſions, *&c.* grounded on the ſame: But all Affidavits belonging to the *Supplicavit Office*, and the *Petty-Bag Office*, and alſo thoſe touching Lunaticks, and Bankrupts, are not filed in the Affidavit Office, but in the Offices where ſuch par-

ticular Matters are tranſacted. *Ord. Chanc.* 18, 19, 91, 93.

Where any Perſon ſhall ground any Motion or Petition on an Affidavit of material Witneſſes to examine in a Cauſe, whereby to gain longer Time therein; the Affidavit ſhall contain the Names of the moſt material Witneſſes, and alſo the Points on which they are to be examined, that the Court may judge of them, and all unneceſſary Delays be avoided. And by an ancient Order of Court, no Affidavit ſhall be taken againſt a former Affidavit; which is ſaid to be ordained for avoiding manifeſt Perjury; and if ſuch Affidavit were taken, the latter was not to be read or uſed, and the Party was left to his Action, *&c.* againſt the Deponent for Perjury; but this Court doth now ſometimes interpoſe, and will either direct or reſtrain ſuch Proſecution, as there may be Cauſe. *Ord. Canc.* 207, *&c.*

Every Affidavit of the Service of Proceſs, or of an Order, ſhould not only be true, as all others ought to be, but alſo to make it of any Uſe, it is neceſſary that it fully prove a good Service: And therefore if the Plaintiff's Name, the Court, the Return of the Writ or Proceſs, the Manner of the Service, or any Thing material be omitted in the Affidavit, no Attachment will be granted upon it for Non-Appearance, *&c.* In an *Affidavit of Notice* of any Thing, 'tis not enough to ſay, that Notice was given, or the Copy delivered to the Party's Clerk in Court; but his Name muſt be expreſly mentioned, that it may certainly appear to whom

whom the Notice is given: Tho' if the Notice be left at the Clerk's Seat with his Agent, *&c.* ſuch Agent need not be particularly named.

The *Forms* of *Affidavits* of Service of Proceſs, are interſpers'd under the proper *Heads*; ſo that I ſhall only inſert in this Place two or three ſpecial Affidavits relating to Bills and Anſwers, *&c.*

An Affidavit of the Truth of a Bill in Chancery.

In Canc'. Inter *A. B.* Quer. & *C. D.* & al. Defen'.

'G. *H.* of, *&c.* Gent. maketh Oath, that 'he was privy to, and is a Party con-'cerned in all and every the Matters contained 'in the Plaintiff's Bill of Complaint, touching, '*&c.* in the ſaid Bill mentioned, and that the 'whole Subſtance of the Complainant's ſaid Bill, 'and the Matter therein contained relating to 'the ſame, are true to the Knowledge of this 'Deponent.

Affidavit that for Want of Sight of Writings, or by Sickneſs, &c. *the Defendant cannot Anſwer.*

In Canc'. Inter *A. B.* Quer'. & *C. D.* Def.

'C. *D.* the Defendant in this Cauſe ma-'keth Oath, that he the ſaid Defendant 'cannot make a ſufficient Anſwer to the Com-'plainant's Bill, without Sight of the Indentures

'of Leaſe and Releaſe in the ſaid Bill ſet forth 'and referred to, which are not at this Time 'in the Cuſtody of this Deponent, but at, *&c.* 'in the County of *S.* in the Hands of, *&c. If* '*the Defendant be ſick*, ſay, *G. F.* the Depo-'nent ſaw *C. D.* the Defendant at his Houſe, 'on, *&c.* laſt, and that he was then ſo very 'Sick and Weak in Bed, that he was not ca-'pable of anſwering the Complainant's ſaid 'Bill.

Affidavit that the Complainants owe nothing, to ſtay Proceedings at Law.

In Canc. Inter *A. B.* & *C. D.* Quer. & *E. F.* Defend'.

'THE Complainants *A. B.* and *C. D.* do 'and each of them doth make Oath, 'that the now Defendant *E. F.* doth ſue and 'proſecute theſe Deponents at Common Law, 'for the Sum of, *&c.* being Money as the ſaid 'Defendant pretends to be due to him upon, '*&c.* when in Truth theſe Deponents or either 'of them are not indebted unto the Defendant 'one Penny; but he hath cauſed theſe Depo-'nents to be arreſted, and held to Bail for the 'ſame, and doth proceed againſt them, know-'ing that the Witneſſes of the Deponents who 'could prove the Payment of the Money, are 'gone beyond the Seas, or not to be found; 'and that theſe Deponents are not able to 'prove the ſame, but by the Defendant's

'own Oath, on his Anſwer in this honourable 'Court.

A. B.

Jurat. 5 *Maii*, 1728. *C. D.*
coram R. H.

Motions *in the Chancery.*

A Motion, which is a Prayer or Requeſt, made *Ore tenus* to the Court, either by the Party himſelf or his Counſel, may be had in a great many Caſes, *viz.* for a Commiſſion to anſwer, to enlarge the Time for anſwering, or for Publication, for ſetting down and hearing the Cauſe, or for a Re-hearing, for Payment of Money, *&c.* or to haſten any of theſe Acts or Proceedings; and may be alſo for any Favour deſired of the Court.

It has been obſerv'd, that there is ſeldom Occaſion for more than one Motion in a Cauſe; as for an Injunction for quieting Poſſeſſion, or ſtaying Suits at Law, *&c.* other Motions being for the moſt Part needleſs, or not tending to end but perplex the Cauſe in Conteſt; and a Suit would be ſooner ready for hearing, if it went on in an orderly Courſe by Pleadings and Proofs: But many Motions are now made relating to the regular Iſſuing forth, the Execution, and Filing of Writs, Proceſs, and other Matters of Courſe; which heretofore were commonly referred to Four of the Six Clerks not in the Cauſe, who hearing the other two Clerks towards the Cauſe determined the Queſtion, without Delay or Charge to the Suitors.

And

And ſometimes Motions, as now made, are of Courſe, *i. e.* where by a ſtanding Rule, or the known Courſe of the Court, the Thing deſired is to be granted without hearing the Parties; and in theſe there needs no Notice to the other Side, nor ought their Counſel to oppoſe them. There are other Motions, which would be of Courſe, on the Facts alledg'd ſtanding ſingle by themſelves; but becauſe there may be probably ſome other Fact in the Caſe reſting in the Knowledge of the Parties, which the Court cannot at preſent diſcern, therefore tho' the Court will not deny the Reaſon of the Motion, it grants it only *Niſi* or conditional; if there be not Notice thereof, *&c.* And if there be, yet all ſuch Motions are not granted abſolutely. Some Motions there are, which are not founded on ſuch general Rules or Uſage of the Court, and ſometimes beſides or againſt the ſame; and theſe are granted or denied as the Court ſees fit, upon the Reaſons of the Matters alledged, as it appears upon the Motion, or upon hearing Counſel on both Sides: Alſo ſome of theſe eſpecially, if frequent and of ſmall Moment, are generally granted without Notice; but if not common, and they are of Weight and Conſequence, then only *Niſi*, if no Notice. And all ſuch Motions as are ſeldom made, or made on extraordinary Occaſions, will rarely be granted without Notice.

Before any Motion is had, that is not of Courſe, Affidavit is to be made of the Service of Notice, *&c.* and the Affidavit muſt be filed, and a Co-

py taken thereof, if there ſhould be Occaſion to prove the Notice; and every Notice of Motion muſt be given Two Days before the Day on which it is to be made; as Notice is to be given on *Tueſday*, and the Affidavit thereof filed on *Wedneſday*, for a Motion on the *Thurſday* next following. And where Notice is neceſſary, it muſt be in Writing, ſigned with the Name of the Perſon that gives it, which is commonly the Party's Clerk or Solicitor; and every Thing the Party moves for ſhould be expreſſed therein, for the Court will not ordinarily extend their Order beyond the Notice; as where a Notice was, that the Court would be moved, that the Plaintiff might be put into Poſſeſſion, and a Receiver appointed, the Court would not order that nothing ſhould be received by the Defendant in the mean Time, tho' the Defendant did not defend the Motion, it not being in the Notice of Motion.

The Notice for Motion is to be ſerved on the other Party, or his Solicitor, or left at one of their Houſes, tho' this hath not been accounted good Service; or which is moſt uſual, it is to be delivered to the Clerk in Court, or left at his Seat in the Office with his Clerk or Servant. Notice of Motion to take Money out of Court, muſt be given to the Party himſelf; except the Court upon a previous Motion has order'd ſo many Days Notice to the Clerk in Court, *&c.* as may be Time enough to ſend his Client ſuch Notice, and to have his Anſwer; or if he being in the Kingdom, but hard to be found, *&c.* ſuch Notice may be order'd to be ſufficient.

If by Reaſon of the Abſence of a Counſel, who ſhould have defended the Motion, the Court thinks fit to put it off for that Time, the former Notice is often order'd to be continued, ſo as the Matter may be moved another Day upon Notice only to ſuch abſent Counſellor. But if a Party gives Notice three ſeveral Times that he will move a Matter, and doth it not, he ſhall ordinarily pay the other Party 10*s.* Coſts; and if it be a Matter of Conſequence, and many Counſel are retained, the Court will order Coſts to be taxed accordingly by a Maſter.

In Term-Time, every *Thurſday* is a Day for Sealing, and Motions only; unleſs it happens to be the ſecond Day of the Beginning, or the laſt but one of the End of the Term: So are *Tueſdays* and *Saturdays*; and the firſt and laſt Days of the Term. In Vacation, *Seal-Days* are Days of Motion, appointed by the Lord Chancellor; and the Morning after the Term, Motions are always made at the Rolls, on a Suppoſition that ſome may remain which ſhould have been moved, but could not the laſt Day of Term. *Ord. Chanc.* 65.

After the laſt General Seal, before the enſuing Term, no Motions are heard; but as this Court is always open, Matters which require Diſpatch may be petitioned for, *&c.*

Notice of a Motion in Court.

In Canc'. Inter *A. B.* Quer', & *C. D.* & *E. F.* Defend'.

THE Defendants intend to move the Court by their Counſel, on, *&c.* or as ſoon after as Counſel can be heard, that the Plaintiff may anſwer the croſs Bill of the Defendants, before the Defendants put in their Anſwer to the Plaintiff's Original Bill; and that, *&c.*

G. C. Sol. pro Def.

Memorand'. The Day, *&c.* a Copy of the above Notice was left with Mr. *T. L.* one of the Clerks, *&c.*

Affidavit of giving Notice of a Motion.

'*G. H.* of, *&c.* maketh Oath, That he this Deponent on, *&c.* laſt, did leave Notice 'in Writing at the Seat of Mr. *T. L.* in the 'Six Clerks Office, who as this Deponent is in-'form'd is the Clerk in Court concern'd for the 'Plaintiff in this Cauſe, That the Defendants 'did intend to move this Court by their Coun-'ſel on, *&c.* then next, or as ſoon after as their 'Counſel could be heard, for the Plaintiff to 'anſwer the Defendants croſs Bill, before the 'ſaid Defendants put in their Anſwer to the 'Plaintiff's Original Bill of Complaint.

Petitions

Petitions *in the Court of Chancery.*

A Petition is the Requeſt of a Perſon in Writing, directed to the Lord Chancellor or Maſter of the Rolls, ſhewing ſome Matter or Cauſe, whereupon the Party prays that ſomething may be granted or done for him: And moſt Things which may be moved for of Courſe, may be petitioned for.

To ſpeed Proceedings, or for Proceſs, or for a Favour deſired, the Court may be petitioned; ſo to have any Hardſhips removed, as that Proceſs of Contempt may be ſtaid, on juſt Cauſe, *&c.* And in many other Caſes, Petitions in Chancery are preferred ſubſequent to the Bill filed; as in ſome Caſes a Petition may be precedent to the Suit, for a Perſon to be aſſigned a Guardian, or to be admitted *in forma Pauperis*, *&c.* Sometimes a Petition is upon a collateral Matter, as it hath Relation to ſome Suit depending, or to an Officer of the Court; to have a Clerk or Solicitor's Bill taxed, or oblige him to deliver up Papers to his Client, *&c.* and 'tis ſaid, where a Matter comes into Court by Petition, and the other Side would diſcharge an Order made thereupon, or have any Thing done relating to the Matter of ſuch Petition, he ought to come regularly by Way of Petition alſo; but the Court on Motion will often do it.

Tho' no former Order made in Court, ſhall be alter'd or even explained upon any Petition; the Execution thereof may be ſtaid for a ſmall

Time on Petition, till the Matter can be moved and debated in Court. No Commiſſion for examining of Witneſſes ſhall be diſcharged, or Depoſitions of Witneſſes be ſuppreſs'd upon a Petition; unleſs the Matter be firſt referred to a Maſter, and a Certificate had thereupon. Nor may an Injunction to ſtay Suits at Law, be granted, reviv'd, diſſolv'd, or ſtaid on Petition; or an Injunction of any other Nature paſs by an Order upon Petition, without Notice, and a Copy of the Petition firſt given to the other Side, *&c.* No Sequeſtration, Diſmiſſion, or final Order is granted on Petition: Nor ſhall the Commitment of any Perſon taken by Proceſs of Contempt be diſcharg'd, but upon hearing the adverſe Party, his Attorney or Clerk in the Cauſe, *&c. Ord. Chanc.* 151.

No *Subpœna*, Attachment, or other Proceſs, ſhall be admitted in any Cauſe upon any Petition, tho' ſign'd, *&c.* until the ſaid Petition be firſt filed with the Regiſter, and an Order drawn up and entered thereupon, as a Warrant for ſuch Proceſs; and all Proceſs and Proceedings otherwiſe iſſued, ſhall be null and void. And no Order made upon any Petitions, (except the ſame be by Way of Summons or Notice) ſhall be good and effectual to ground *Subpœna's*, or other Proceſs thereon, but where within Three Days in Term-Time, or a Week in the Vacation after the Order granted, the ſame be drawn up and entered with the Regiſter, to the End no Perſon may be ſurprized with any private Order on any Petition, *&c.* Alſo an Order upon a Petition, muſt

muſt be drawn up, paſs'd, and ſerv'd by delivering a Copy to the other Party, as other Orders are. *Ord. Chanc.* 49, 217.

Petitions are delivered out of Court, to the Chancellor's or Maſter of the Rolls's Secretary, whoſe Buſineſs is to get them anſwer'd and ſign'd; and if the Petition be for a Matter of Courſe, it is generally forthwith granted: But if it be for any Thing which requires Examination, or that the other Side be heard, then it is ordered that all Parties attend the next Day of Petitions or General Seal; at which Day the Matter is debated and ordered as the Court ſees Cauſe. And in ſuch Caſes, Affidavits are often neceſſary to inform the Court how Matters ſtand on each Side. If there be Occaſion to petition out of Term, and the General Seals too, and the Matter is of Weight and Moment, a Petition may be deliver'd, and the Parties will be order'd to attend the Lord Chancellor, or Maſter of the Rolls, at the Time appointed in the Order, and then they ſhall have Juſtice done them.

'Tis ſaid the Lord Chancellor only is to be petitioned touching Pleas, Demurrers or Exceptions, and concerning any Decree or ſpecial Order made by the Chancellor, and for Rehearings, and not the Maſter of the Rolls: But in moſt other Caſes, Application is made to the Maſter of the Rolls.

In the Drawing of Petitions, Brevity and Form are the Two great Things requiſite to be obſerv'd; as appears by the following Precedents.

A Pe-

A Petition for the Lord Chancellor's Letter, requiring a Nobleman to appear, &c.

To the Right Honourable *P.* Lord *K.* Lord High Chancellor of *Great Britain.*

A. B. Pl', *C.* Lord *D.* Def.

The humble Petition of the Complainant

Sheweth,

THAT your Petitioner having exhibited a Bill in this Honourable Court, to be relieved againſt the Defendant for the Matters therein contained, cannot by the ordinary Proceſs of this Court compel the Defendant, by Reaſon of his Peerage, to anſwer the ſame, 'till your Lordſhip hath firſt written a Letter to him ſo to do.

Your Petitioner therefore humbly prays your Lordſhip's Letter directed to the ſaid Defendant to appear in this Court on, *&c.* next, and anſwer your Petitioner's ſaid Bill.

And your Petitioner ſhall ever pray, &c.

A Pe-

A Petition to amend the Plaintiff's Bill, on Payment of Coſts.

To the Right Honourable the Maſter of the Rolls.

Sheweth,

THAT your Petitioner having exhibited his Bill into this Honourable Court againſt the Defendant *C. D.* and others, the ſaid *C. D.* only put in his Anſwer thereunto, (none other of the Defendants being ſerv'd with Proceſs) upon the Peruſal of whoſe Anſwer, your Petitioner is adviſed to amend his Bill.

Your Petitioner humbly prays your Honour, that he may be at Liberty to amend his Bill, paying 20*s.* Coſts to the ſaid Defendant *C. D.* or to his Clerk in Court.

And your Petitioner ſhall ever pray, &c.

5 *Januarii,* 1728.
Be it ſo.
J. Jekyl.

A Pe-

A Petition to add a Defendant in a Suit.

To the Right Honourable, *&c.*

Sheweth,

THAT in *Eaſter-Term* laſt, your Petitioner filed a Bill in this Court againſt the Defendant, to which the Defendant hath put in his Anſwer; and that your Petitioner is ſince adviſed by his Counſel to make *E. F.* of, *&c.* a Defendant in this Cauſe.

Wherefore your Petitioner humbly prays, that he may be at Liberty to amend his ſaid Bill, and add the ſaid *E. F.* as a Defendant.

And your Petitioner ſhall ever pray, &c.

A Pe-

A Petition for further Time to anſwer a Bill.

To the Right Honourable the Maſter of the Rolls, *&c.*

Sheweth,

THAT the Plaintiff exhibited his Bill againſt your Petitioner in *Hillary-Term* laſt, whereto your Petitioner appear'd, and took out a Commiſſion to take his and the other Defendant's Anſwers thereto in the Country; by Virtue whereof the other Defendant is ſworn to his Anſwer, but your Petitioner could not anſwer in the Country, for Want of ſome Writings which were here in Town, nevertheleſs your Petitioner is now come to Town, and will anſwer here by the End of the Term.

Your Petitioner therefore humbly prays your Honour to grant him Time to put in his Anſwer to the ſaid Bill until the laſt Day of the Term, and in the mean Time that all Proceſs of Contempt may be ſtaid.

And your Petitioner ſhall ever pray, &c.

6 Maii, 1727.
Let the Defendant have Time to anſwer 'till, *&c.* and in the mean Time ſtay Proceſs, whereof give Notice.

J. J.

A Pe-

A Petition for ſetting down Exceptions to an Anſwer to be argued.

To the Right Honourable the Lord Chancellor, *&c.*

Sheweth,

THAT your Petitioner having put in his Anſwer to the Plaintiff's Bill, the Plaintiff put in Exceptions thereto, and the ſame being referred to *J. B.* Eſq; one of the Maſters of this Court, he by his Report dated, *&c.* did report your Petitioner's Anſwer to be inſufficient, in the ſeveral Particulars in his ſaid Report mentioned: And foraſmuch as your Petitioner is adviſed that his Anſwer to the Plaintiff's ſaid Bill is full and ſufficient to a common Intent;

Your Petitioner therefore humbly Prays your Lordſhip to appoint a ſhort Day for arguing the ſaid Exceptions; and that all Proceedings in the mean Time for Want of Anſwer be ſtay'd.

And your Petitioner ſhall ever Pray, &c.

10 *Junii* 1728.
Be it ſo, let the Exceptions be argued on, *&c.* whereof forthwith give Notice.

K. Chanc.

A Petition to ſet down a Cauſe in the Paper for Hearing.

To the Right Honourable the Maſter of the Rolls, *&c.*

Sheweth,

THAT Publication is, by Order, to paſs in this Cauſe, the firſt Day of the next Term; and your Petitioner by the ſame Order is to procure the ſaid Cauſe to be ſet down to be heard ſome Time within the ſame Term.

Your Petitioner humbly Prays, that this Cauſe may be put into the Paper of Cauſes, for the laſt Day of Cauſes within the now next Term.

And your Petitioner ſhall Pray, &c.

A Petition to the Lord Chancellor for a Rehearing in a Cauſe.

To the Right Honourable *P.* Lord *K.* Lord Chancellor, *&c.*

Sheweth,

THAT your Petitioner finds himſelf much aggrieved by a decretal Order made in this Cauſe, the Day, *&c.* whereby your Petitioner is ordered and decreed to pay unto the Plaintiff the Sum of, *&c.* on or before, *&c.* next, with Intereſt for the ſame, from the Time of the

the ſaid Hearing until the Money be paid; which ſaid Sum of, *&c.* or the greateſt Part thereof, having been long ſince paid, and Proof thereof made, as your Petitioner conceives and is adviſed;

Your Petitioner therefore humbly Prays, that your Lordſhip will be pleaſed to grant a Re-hearing in this Cauſe before your Lordſhip, he ſubmitting to pay what Coſts the Court ſhall award, in Caſe his Complaint be found groundleſs.

And your Petitioner ſhall ever Pray, &c.

References *of Proceedings in the Chancery.*

A Reference is an Order of Court, whereby Exceptions, Contempts, Irregularities, Matters of Account, *&c.* are upon Petition, Motion, or otherwiſe, referred to a Maſter of Chancery to examine and make a Report of to the Court; upon which the Court may make an abſolute Order therein. And ſometimes the Maſter is empowered by ſuch Order of Reference, finally to ſettle and determine ſome Matter therein mentioned.

References are generally made to one of the Maſters ſitting in Court, when the Matter referred was moved; but on Motion and ſhewing Cauſe, they may be directed to any other of the Maſters in Ordinary of the Court. And tho' in ſome Caſes References are abſolutely neceſſary for the Eaſe of the Court, as to examine, ſtate

ſtate and adjuſt Accounts, peruſe Court-Rolls, and other Writings, *&c.* which would take up too much Time for the Court, and hinder other Buſineſs of greater Importance; yet in many Caſes they occaſion great Charge and Loſs of Time to the Suitors: And ſome have held it convenient that the Inſufficiency of Anſwers in Chancery ſhould not be referred at all; but that the Exceptions ſhould be at firſt openly argued in Court, whereby theſe who now for Delay only put in frivolous Anſwers, would be more cautious for Fear of giving Offence to the Court, and ſo the Matter being determined at once, Delays would be prevented, and Charges ſaved; and perhaps the Court would not thereby find ſo much Trouble as now they do on Exceptions to Maſters Reports.

There ſhall not be any Reference of an Anſwer, without alledging the ſpecial Cauſes in the Exception: And where a Cauſe is gone ſo far as to Examination of Witneſſes, no Reference is to be made to any Maſter, *&c.* to hear and end the Matter, except it be in ſome ſpecial Caſes of Parties by Conſent, *&c.* Alſo a Reference of the State of the Caſe is to be ſparingly granted, except by Conſent: And no Reference ſhall be upon a Demurrer, or Queſtion, touching the Juriſdiction of the Court, but ſuch Demur, *&c.* is to be heard, ruled and determined by the Court.

Matters of Account, (except in very weighty Cauſes) are uſually upon the Hearing, turned over to a Maſter to examine and report, in order for the Court to make a final Decree; with

ſome Directions to the Maſter in what Manner he ſhall proceed. If both Parties, before Hearing, conſent to an Examination of Accounts to make the Cauſe more ready for the Hearing, it may be granted: But the more common Method of Proceeding at this Time, is not to examine to a Matter of Account before the Hearing, but afterwards; which if the Witneſſes be in Town, *&c.* is before a Maſter, and if not, then by Commiſſion directed by the Maſter upon an Order for his being arm'd or provided with a Commiſſion, *&c.* It hath been obſerv'd, that in an Account, or Taxing Coſts before a Maſter, Vouchers or Proofs are generally expected for every Thing that doth not certainly appear, in itſelf, or as a neceſſary Conſequence of ſome other Thing already proved, or where there is not a violent Preſumption, *&c.* wherefore Copies and Papers of all Sorts relating to the Cauſe are to be carefully preſerv'd.

And if before the Maſter on a Reference, either Party, by his Counſel, Clerk or Solicitor, admits a Matter of Fact; the Maſter ſhall take a *Memorandum* thereof in his Minute-Book, and the Party admitting ſhall in his Preſence ſubſcribe ſuch *Memorandum*; which Subſcription will be concluſive to the Party, on whoſe Behalf the ſame was ſo ſubſcribed, ſo as the other Side ſhall not be put to any farther Proof of that Matter. *Ord. Canc.* 254.

When a Maſter hath an Order of Reference, on Requeſt of the Party producing it, he grants his Warrant or Summons, whereby he appoints a Time and Place, (uſually his Chamber) for the

the Parties to attend him thereon, when and where they may come with their Counſel, Clerk, or Solicitor, as they ſee Cauſe; and the Summons being ſerved on the adverſe Party, his Clerk or Solicitor, with a Copy of the Order of Reference, if he attends not, the Maſter grants a ſecond Summons, appointing a farther Day, *&c.* And if he doth not then attend, a third Summons is granted, called a Peremptory Summons: And if then he does not attend, the Maſter is to make his Report *ex Parte*, of that Side which attends and deſires the ſame.

It was the antient Practice, for the Regiſter within Ten Days after the End of every Term to certify to the Lord Chancellor what References depended in the Hands of any Maſter, and how long they had depended; that the Court might require an Account thereof from the Maſters, and quicken them to a Diſpatch. And a Maſter dying, the Court hath ordered, that the ſeveral Matters referred to him ſhould be transferred to another; and that all Books, Papers, *&c.* that concerned the Cauſes referred to the deceaſed Maſter, ſhould be delivered over to the living Maſter when demanded.

The Matter of a Suit in Chancery, by Conſent may be referred to Arbitrators, and their Arbitration ſhall be in Nature of a Maſter's Report, *&c.*

An Order of Reference to a Maſter in Chancery.

Lord Chancellor.

Die & Anno, &c. Inter A.B. *Quer.* & C.D. *Def.*

UPON opening the Matter this preſent Day unto this Court by Mr. *W.* of the Plaintiff's Counſel, it being alledged that the Defendant had put in a very inſufficient Anſwer to the Plaintiff's Bill, whereto the Plaintiff hath taken Exceptions; it is ordered, that the Plaintiff's Bill, the Defendant's Anſwer, and the Exceptions thereto taken, do ſtand referred to Mr. *H.* one of the Maſters of this Court, to examine and certify whether the Defendant hath fully anſwered the Plaintiff's Bill or not.

The Maſter's Summons to attend him.

Inter *A. B.* Quer. *C. D.* Def.

BY Virtue of an Order made the Day of, *&c.* of Reference of the Defendant's Anſwer, *&c.* I do appoint *Monday* next at Nine of the Clock in the Forenoon, at the Houſe or Chambers of, *&c.* to conſider of the Matters referred, at which Time and Place all Parties concerned are to attend, or ſome for them; and at which Time I ſhall peremptorily proceed.

R. H.

Dated this Day, *&c.* 1728.

Reports

Reports *of Maſters of Chancery.*

A Report is a Maſter's Certificate to the Court how the Facts and Matters referred to him by the Court to examine, appear unto him; or of ſomewhat which is his Duty to inform the Court of.

Maſters of the Court of Chancery, upon a particular Matter referred to them, are not to certify the State of the Cauſe, and of the Evidence on both Sides; but they are to make their Reports briefly, with ſome Opinion upon the Matter reported. This is by an antient Order of Court; and by a later Order, all Reports and Certificates muſt be drawn as ſuccinctly as may be, (reſerving the Matter clearly for the Judgment of the Court) and without Recital of the ſeveral Points of the Order of Reference, or the Debates of Counſel; unleſs it be in Caſes where the Maſters are doubtful, they ſhortly repreſent to the Court the Reaſons which induced them to what they did. Alſo no Maſter ſhall, on the Importunity of any Counſel, &c. return a Special Certificate to the Court, except he be required by the Court ſo to do; or that his own Judgment, in Reſpect to Difficulty, lead him thereto. *Ord. Chanc.* 144.

If a Time is prefix'd for the Maſter to make his Report, and he doth it after that Time, the Report will be diſallowed: And a Report is not ordinarily to exceed the Order of Reference; but when the Court requires to be ſatisfied from a Maſter of any Matter alledged to be confeſſed,

or ſet forth in an Anſwer in Chancery, he is to take Conſideration of the whole Anſwer, and certify not only whether the Matter be ſo confeſſed, *&c.* but alſo any other Matter avoiding or ballancing that Confeſſion, that ſo the Court may receive a true and full Information. *Chanc. Caſ.* 179. *Ord. Canc.* 145.

A Maſter to whom Accounts, or other Matters, are by any Order referred, when he hath fully heard both Parties, and prepared his Report, ſhall at the Requeſt of either Party iſſue a Summons, that the Parties or ſome of them do again attend him, who ſhall have Liberty to peruſe ſuch Report, and take a Copy of it, *&c.* And if either Party be diſſatisfied with the Report, he may in four Days next after ſuch Attendance, bring in a Note in Writing of his Objections, and take out a Summons to be heard thereupon; and then the Maſter is to ſettle and finiſh his Report. Tho' after the Maſter hath made his Report, either of the Parties may take Exceptions to it, which ſhall be argued in open Court; and if upon arguing the ſame, it appears that the Party excepting did not offer his Objections to the Maſter, but depended upon his Appeal to the Court, and ſought Delay, altho' the Exceptions happen to be allow'd, for this Neglect and Trouble to the Court, and Charge and Delay to the adverſe Side, the Party ſhall pay Coſts as the Court ſhall think reaſonable. *Ord. Chanc.* 201, 202.

If any Exception, or diſtinct Clauſe of an Exception to a Report, upon an Account, *&c.* be over-ruled at the Arguing, the Party excepting

ing ſhall pay 20*s.* for each that ſhall be overruled; and for every Exception waved, or not opened 10*s.* And by the Orders of the Court, if one appeals from a Maſter's Report, by excepting thereto, he muſt file his Exceptions ſpeedily with the Regiſter, and depoſit 5 *l.* with him, whereon the Proceedings upon the Report are ſtay'd 'till the Exceptions be argued: And if the Court do not alter the Report, the 5 *l.* ſhall be paid to the Party defending the Report, with ſuch Increaſe as the Court ſhall find Cauſe to impoſe; otherwiſe the ſame ſhall be reſtored to the Party appealing, who is alſo to have the like Sum of the other Party, *&c.* Upon filing Exceptions, and depoſiting Money with the Regiſter, he gives a Certificate thereof; and on Motion and producing the ſaid Certificate, the Court will order a Stay of Proceedings, and appoint a Day, commonly the next Day of Exceptions, for hearing thereof: And the Regiſter is to enter ſuch Cauſes of Appeal and Exceptions, *&c.* in order as brought to him to be determined by the Court in Courſe on Days of Motions and Exceptions, and Notice muſt be given to the Clerk on the other Side; and the Regiſter ſhall ſet up a Paper of ſuch Cauſes two Days before the Day of arguing ſuch Exceptions. *Ord. Canc.* 147.

Where a Maſter Reports or Certifies any Irregularity in Proceedings, as theſe Matters were formerly certified by the Six Clerks not towards the Cauſe, there may be a Reference thereof, but no Exceptions. And when by a ſpecial Order the Court ſhall admit Exceptions to be put

in to a Report, whereby Money is reported due; after the Time ſuch Exceptions ſhould have been regularly filed, no Proceedings on ſuch Report ſhall be ſtay'd without giving Security to pay the Money, or bringing it into Court, unleſs the Court ſhall otherwiſe particularly order. *Ord. Canc.* 203.

Reports and Certificates made by any of the Maſters, ſhall be filed with the Regiſter within Four Days after the making and ſigning; and the Regiſter is to mark on the Back the Day of their Receipt and Filing: And all Proceedings grounded on ſuch Report not ſo filed, ſhall be void; and the Regiſter's Certificate of Neglects ſhall be good Cauſe to diſcharge ſuch Proceedings, and for Coſts againſt the Party offending, *&c.* On a Report to ground a Decree, after it is ſigned by the Maſter, no Order can be had to confirm it 'till it is filed with the Regiſter; and Notice of the Filing muſt be given to the other Side a Week at leaſt before the Motion for confirming it, the other Party having Eight Days from the Service to except thereto: But if it be not to ground a Decree, and it is poſitive, it is to ſtand, and Proceſs may be taken out to enforce the Performance, *&c.* without any farther Motion; except the adverſe Party, upon Notice to his Attorney or Clerk in Court, that ſuch Report is filed, do in due Time obtain ſome Order of Court to ſuſpend the ſame. And ſuch Order of Suſpenſion or Control, muſt be obtained within Eight Days after Notice of the Reports being filed, if Notice be given in Term, or during the General Seals; or it muſt be had within

four Days of the next Term, if the Notice be given after the Term and General Seals are over. *Ord. Canc.* 146.

Upon a Diſmiſſion with Coſts to be taxed by a Maſter, there needs no Confirmation of his Report, but a *Subpœna* may be forthwith taken out for the Coſts: And if an Anſwer be reported inſufficient, Proceſs for Coſts and a better Anſwer may be iſſued immediately. If the adverſe Party being ſerved with a Report, do not conſent to the confirming thereof, it will be only ordered *Niſi Cauſa, &c.* the next Day of Motions, or ſome other ſhort Day: And if after a Report is confirmed *Niſi Cauſa*, a Party on Motion obtains Leave to go back to a Maſter for him to Review it; he muſt pay 40 *s.* and further Coſts to be taxed, if the Report be affirmed.

No Report needs confirming, but what is to ground a Decree; and then if there be a Decree, and the Report ſigned and inrolled, it cannot be altered but by Bill of Review. Nor will the Court eaſily, if at all, ſtir after a Report is confirmed, on Pretence of any Omiſſion or Miſtake therein; becauſe the Parties had ſufficient Time to except to it.

A Report of Money due on Account, and moſt other Matters decreed, muſt be perſonally ſerved, before confirmed, *&c.*

A Re-

A Report by a Maſter of ſeveral Matters on an Account.

In Canc. Inter *A. B.* Quer. *C. D.* Def.

WHereas by an Order of Reference bearing Date, *&c.* laſt paſt, it is referred to me to examine into and ſtate the Accounts of the Defendant, of what Money and Rents he hath received for the Meſſuages and Tenements called, *&c.* ſituate in, *&c.* in Truſt and for the Uſe of the Plaintiff, purſuant to the Will of *T. B.* of, *&c.* deceaſed, from the Time of his Death to, *&c.* laſt, on the Plaintiff's Exhibiting his Bill into this Court, and the Defendant's Anſwer thereto; I have by Virtue of the ſaid Order examined into the Account of the Defendant, entitled an Account of, *&c.* which he hath given in on Oath by the ſaid Anſwer, of all the Money and Rents by him received during the Time aforeſaid, and do find the ſame to be true, ſaving only a ſmall Miſtake of, *&c.* and particularly that there appears to be due to the Plaintiff from the Defendant the Sum of, *&c.* on Account of the ſaid Truſt, and Money and Rents received as aforeſaid; which I humbly certify to this Honourable Court. *R. H.*

A Report of an Anſwer in Chancery inſufficient.

Inter *A. B.* Quer. & *C. D.* Def.

BY Virtue of an Order of the High Court of Chancery of the Day, *&c.* whereby I am to

to conſider of the Complainant's Bill and Exceptions, and the Defendant's Anſwer in this Cauſe; I have, in Obedience to the ſaid Order in the Preſence of Counſel on both Sides, (or of the Plaintiff's Counſel, none attending for the Defendant, though due Notice was given, *&c.* as appeared to me by Affidavit) conſidered thereof, and do find that the Defendant's Anſwer is inſufficient in ſeveral Points, particularly in, *&c.* And that the Defendant ought to amend and make his ſaid Anſwer more full and perfect in the ſaid Points excepted unto; which I humbly certify, and ſubmit to the Judgment of this Honourable Court.

T. B.

A Report of Coſts, on taxing a Bill.

Inter *A. B.* Quer. *C. D.* Def.

FOraſmuch as it appears to me by Certificates out of the ſeveral Offices, that the Defendant hath been examined upon a Contempt proſecuted againſt him by the Plaintiff, and no Reference of Examination procured, nor Commiſſion taken out by the other Side, or Witneſſes examined in Court to prove the ſaid Contempt, within the Time limited by the General Rule, whereby he is diſcharged of the ſaid Contempt; I have therefore conſidered of a Bill of Coſts by him expended in making his Defence, amounting to 19 *l.* 17 *s.* 6 *d.* and do tax the ſame at 15 *l.* which the Plaintiff is to pay to the Defendant accordingly.

J. L.

Excep-

Exceptions to a Maſter's Report.

In Canc. Inter *A. B.* Quer. *C. D.* Def.

Exceptions *taken by*, &c. *to the Report made the Day*, &c. *by Mr.* B. *one of the Maſters of this Court, concerning the Sufficiency of the Defendant's Anſwer.*

THE ſaid Exceptant ſaith, That the ſaid Maſter having made his Report againſt the Defendant's Anſwer as inſufficient; in that the ſaid Defendant hath not in his ſaid Anſwer ſet forth, *&c.* required by the Plaintiff's Bill: Now he excepts againſt the ſaid Report, foraſmuch as the ſaid Anſwer is full and ſufficient, notwithſtanding the ſaid Maſter's Report, there being no Occaſion, according to the Practice of this Court, to ſet forth the ſame in the ſaid Anſwer, as this Exceptant is of Opinion, and ſubmits to the Judgment of this Court.

For which Reaſon the Exceptant prays that the Report may be ſet aſide, and the Anſwer adjudged ſufficient.

A *Certificate* generally is a Matter in Writing under the Hands of Aſſiſtants, Officers and Miniſters of the Court, informing the Court of ſomething under their reſpective Adminiſtrations or Cogniſance, that is done, or not done, or misdone, which an Order or Mandate of the Court, or their Duty, *&c.* requires them to acquaint the Court with: And theſe Certificates the Court gives much Credit to, eſpecially from the Aſſiſtants and ſtanding Officers of the Court.

But the Certificate of Commiſſioners, of any Thing touching the Execution of their Commiſſion, ought to be filed before read, *&c.* Or-

Orders *of the Court of Chancery.*

ORDERS of the Court are either general or ſtanding Orders, commonly called *Rules*; or are interlocutory, or incidental, ſometimes relating to the Commencement of the Suit, and ſometimes touching the Proceſs, *&c.*

And Orders concerning the Proceedings of the Court, ſometimes are founded on the ſtanding Orders or Rules of Court, and upon the particular Circumſtances of the Caſe, and obtained on the Petition or Motion of one of the Parties in the Cauſe; or of ſome Perſon that is intereſted in or ſome Way affected by it, or of a Party about to commence a Suit, *&c.* Alſo ſometimes Orders are made upon hearing both the Parties contending, and in theſe Regard is always had to the general Rules and Uſage of the Court: And ſometimes they are made by Conſent of the Parties, and then they are often beſides or beyond the Rules, or the common Uſage of the Court; but an Order againſt or out of the general Rules, or Courſe of the Court, muſt expreſs the ſpecial Reaſons moving the Court to vary from thoſe Rules.

All Orders muſt be pronounced in Court, and the Regiſter that ſits in Court is to draw them up, from the Notes or Minutes he takes thereof in his Book; and that it may be the better done, the Solicitor in the Cauſe after the Riſing of the Court, if the Order be any Thing ſpecial, may go to the Regiſter's Office and there take a Copy of the Minutes, and give them to the Regiſter explained

explained right, ſo that he may have the Order drawn up without Miſtake for his Client's juſt Advantage: And if there be any Difficulty in ſettling the Notes or Minutes, or any Doubt of their Meaning, the Regiſter gives the Clerk or Solicitor, who deſires the Order to be drawn up, a Summons to the Solicitor on the other Side, appointing a Time for both Sides to attend him in order to ſettle it; and if by this Means it cannot be ſettled, the Court muſt be applied to, to explain the Minutes. But if the Order be of Courſe, the Solicitor generally draws up the Minutes of his own Head, as ſuch Matter is commonly ordered, and gives them to the Regiſter's Clerk to draw up the Order by; and when the Order is drawn up, and entred by the Entring Clerk, then the Regiſter paſſes and ſigns it, whereupon it is perfected, and the other Side may be ſerved therewith.

If a Perſon upon whoſe Motion an Order is made, doth not draw it up and perfect it, he cannot ordinarily have any Uſe thereof or take any Benefit by it. And Orders are to be entred within eight Days from the pronouncing them; and the other Side hath four Days to object againſt them before they are paſſed, in order to which a Copy of them as drawn up muſt be delivered, and afterwards in that Time returned with the Objections made, *&c.* All Orders drawn up by the Regiſter muſt be ſigned and entered in due Time; though if an Order be entered, the Regiſter's Hand to it is often omitted, except it be of great Moment; but if this Matter be objected, the Order will not be admitted to

be read in Court, *&c.* No Draught of any Order ſhall be delivered by the Regiſter to either Party, without keeping a Copy thereof; to the End, that if the Order be not entred, yet the Court may, if needful, be inform'd of what was formerly done, and not be put to a new Trouble. And the Regiſter upon the Delivery of any ſuch Draught, is not to reſpect the Interlineations or Alterations of the Counſel, *&c.* further than to be put in Mind of what was delivered in Court, and ſo to conceive and frame the Order according to his Oath and Duty.

The Regiſter is to ſet down Orders, as they are pronounced by the Court truly, at his Peril, without troubling the Lord Chancellor by any private Attendance; and regularly no Order made in open Court, is to be altered on Petition, *&c.* But if the Regiſter ſhall draw up and paſs any Order contrary to the Directions of the Court, the Lord Chancellor, or Maſter of the Rolls, before whom it was moved, will ſometimes upon Petition (when the ſame cannot be conveniently done by Motion in reſpect to Time, *&c.* as in the Vacation) appoint a Day for both Sides to attend with the Regiſter to ſet it right. After Orders are entred in the Regiſter's Office, no Alteration ſhall be made in them on any Occaſion whatſoever, without ſpecial Order and Direction of the Court. But where any Order is had, and a former Order, any way material for the Court to take Notice of, was made in the Cauſe touching the ſame Matter, and which the Court was not truly and fully informed of, the Court on Motion will quaſh or alter the ſame,

as

as ſurreptitiouſly obtained: And therefore the Regiſter, in drawing up any ſuch Order, doth always mention the next precedent Order therein; and care is to be taken that it be fully and truly recited, leaſt any Miſtake in the Recital ſhould vitiate the Order. And an Order may not only be quaſhed and altered as above, when made and entred; but it may be alſo diſcharged on good Cauſe: An Order of the Lord Chancellor may in Court be diſcharged by the Maſter of the Rolls, when he only is ſitting there; but if it be a Matter of Difficulty, he will not ordinarily meddle with it, unleſs it be by Conſent of Parties. If a Party moves to diſcharge an Order, he ought to have it drawn ready to ſhew to the Court, that ſo the Court may ſee and judge of the Order, and of the Reaſons upon which it was made, before they proceed to diſcharge it, *&c.*

Orders after a Decree paſt, are never to retract from but to purſue the Decree, and carry it on with Effect. Juſt before the Riſing of the Court, Counſel may move to have an Order *Niſi Cauſa* made abſolute; which the Court will grant, provided Cauſe be not ſhewn before the Court riſes: If it be moved early in the Day, it has ſometimes been refuſed, and the Party bid to move it at the Rolls in the Evening; as the other Party has all the Day, during the Sitting of the Court, to ſhew Cauſe. And an Affidavit of the Service of the Order *Niſi* is neceſſary to ſuch Motion; and without a Motion ſuch Order is not abſolute, although no Cauſe be ſhewn, except it be expreſly ſaid in the Order,

der, without further Motion. Alſo if you move not to make ſuch Order abſolute till after the Day given to ſhew Cauſe, an Affidavit of the Service of the Order muſt be produced, and likewiſe a Certificate from the Regiſter that no Cauſe is ſhewn to the contrary; and then if on moving, none ſhew Cauſe, the Court makes it abſolute.

The uſual Way of ſerving an Order, is to ſhew it to the Clerk or Solicitor on the other Side, and give him a Copy thereof, or to leave a Copy of it with ſome Perſon attending in the Clerk's Seat in the Office, and ſhew him the Order: But till the Order under Seal be perſonally ſerved on the Party himſelf, he is not generally brought into Contempt; nor to be committed for diſobeying it. Though in the Caſe of an Order made againſt a Solicitor, Miniſter, or Officer of the Court, it hath been held to be otherwiſe; becauſe he is ſuppoſed to be preſent, and know what paſſes in the Court. An Order for Payment of Coſts or other Money, muſt be ſerved perſonally, and the Coſts, *&c.* demanded; and if the Party to whom payable, doth not ſerve the Order himſelf, he muſt give him that ſerves it a Letter of Attorney or other Authority to demand and receive the ſame.

As to Diſobedience to Orders, the Diſobeying an Order which enjoins the not doing of a Thing, is looked upon as a greater Contempt, than where any Thing is commanded to be done; for the firſt is always in a Man's Power, and the other not ſo.

An Order for the Complainant to amend his Bill.

Lord Chancellor.

Die Lunæ, &c. Anno Regn. Regis Georgii 12. *Inter* A. B. *Quer.* C. D. *Def.*

UPON Information this Day made unto this Court by Mr. *T.* being of the Plaintiff's Counſel, it was alledged that the Plaintiff having exhibited his Bill into this Court againſt the Defendant, to be relieved for the Matters therein contained, and finding his Bill to be miſtaken in ſome material Points thereof; it was therefore pray'd that the Plaintiff may be at Liberty to amend his Bill as he ſhall be adviſed, and that the Defendant put in another Anſwer thereto: Which this Court, upon the Plaintiff's paying the Defendant 20*s.* Coſts for the ſame, doth order accordingly.

Intr. *Per* E. G. *Dep. Reg.*

An Order to have further Time to Anſwer.

Die & Anno, &c. Inter *A. B.* Quer. & *C. D.* Def.

UPON opening of the Matter this Day, *&c.* by Mr. *W.* of the Defendant's Counſel, it was alledged that the Plaintiff hath exhibited his Bill this Term, with a long Account of ſeveral Matters tranſacted beyond the Seas, ſo that the Defendant cannot give a full and per-

fect Anſwer thereto, nor inſtruct his Counſel to draw the ſame, without looking into divers Letters and Papers ſent to and from the Plaintiff and others touching the ſaid Matters, which will require ſome Time for the doing thereof; it was therefore pray'd that the ſaid Defendant may have Time to put in his Anſwer to the ſaid Bill till, *&c.* which is order'd accordingly.

Intr. *Per* E. G. *Deput. Reg.*

An Order to ſet down a Cauſe for Hearing.

At the Rolls.

Maſter of the Rolls.

Die & Anno, &c. Inter A. B. *Quer. &* C. D. *Def.*

UPON the Plaintiff's humble Petition this Day preferred to the Right Honourable the Maſter of the Rolls, and for the Reaſons therein contained; it is ordered, that this Cauſe be put down to be heard on, *&c.* next, and all the Parties are then to attend, *&c.*

Intr.

An Order for a Re-hearing.

Lord Chancellor.

Die, &c. Inter A. B. *Quer. &* C. D. *Def.*

UPON the humble Petition of the Plaintiff this Day preferred to the Right Honourable the Lord Chancellor of *Great Britain*, for the Reaſons therein contained, it is ordered, that upon the Plaintiff's Depoſiting 10*l.* with the Regiſter within a Week, this Cauſe be ſet down to be re-heard on, *&c.* and that all Proceedings be in the mean Time ſtay'd, whereof Notice is to be forthwith given to the other Side.

The ſaid Plaintiff hath this Day of, *&c.* in the Year, *&c.* depoſited the ſaid 10*l.*

E. G. *Dep. Reg.*

An Order to confirm, or to diſcharge a former Order.

At the Rolls.

Maſter of the Rolls, *&c.*

Die, &c. Inter A. B. *Quer.* C. D. *Def.*

WHereas by an Order of the Day, *&c.* laſt, it was ordered, *&c.* Now upon opening of the Matter this preſent Day unto this Court by Mr. *L.* being of the Defendant's Counſel, it was

was alledged that, *&c.* as by the Affidavit now read appeareth; and therefore it was pray'd that the ſaid laſt Order may be made abſolute; which this Court doth order accordingly.——*If to diſcharge the Order*, ſay, Upon opening of the Matter, it was alledged, *&c.* And that it was ordered, *&c.* but that, *&c.* And therefore it was pray'd the ſaid Order may be diſcharged; whereupon it is ordered that the ſaid Order for, *&c.* be diſcharged accordingly, the Plaintiff paying Coſts.

Per, &c.

Intr.

Affidavit of Service of an Order.

In Canc. Inter *A. B.* Quer. *C. D.* Def.

'G. *H.* maketh Oath, that on, *&c.* laſt paſt 'he this Deponent did ſerve Mr. *T. C.* 'who is concern'd for the Defendant in this 'Cauſe, with the Order hereto annexed, by 'ſhewing the ſame and delivering a true Copy 'thereof to him the ſaid *T. C.* or unto, *&c.* Ser-'vant of the ſaid *T. C.* at his Maſter's Seat at 'the Six Clerk's Office.

Suits *in Chancery* in forma Pauperis.

IN the Chancery and other Courts, Suits are generally proſecuted with Charge; but if the Complainant or Defendant be ſo Poor as not to be worth 5 *l.* the Court of Chancery will, before or after the Suit commenced, admit him to

ſue or defend *in Forma Pauperis*, without Charge; tho' ſometimes heretofore, the Court hath refuſed to admit the Plaintiff a *Pauper* after the Suit begun, without ſome ſpecial Cauſe: And it has been complained of as an Abuſe, that both Parties, Plaintiffs and Defendants have been admitted *in Forma Pauperis* in the ſame Cauſe; for that it tends much to the Trouble of the Court, and encourages the Parties to be vexatious.

By Statute, Poor Perſons having Cauſe of Action or Suits, ſhall have original Writs, *&c. Gratis*; and Counſel and Attornies aſſigned, without taking Fees, 11 *Hen.* 7. *c.* 12. And by the Orders of the Court, after a Party is admitted a *Pauper*, no Fee, Profit or Reward ſhall be taken of him by any Counſel, or Clerk, appointed him, for the Diſpatch of his Buſineſs, whilſt it depends in Court, or he continues a *Pauper*: Nor ſhall any Contract or Agreement be made for any Recompence or Reward afterwards; and if any Clerks, *&c.* offend herein, they ſhall ſuffer ſuch Puniſhment as the Court ſhall think fit to inflict; and if any *Pauper* offend, he ſhall be *diſpauper'd*, and never again admitted in the ſame Suit *in Forma Pauperis*, *&c. Ord. Chanc.* 152. But altho' the Clerks take no Fees, ſtrictly ſo called, of a *Pauper*; yet they may make him pay for the Labour of Writing, after the Rate of a Penny *per Sheet*, and this is ſaid to be allowed by the Court.

If it be made appear to the Court, that any *Pauper* has ſold or contracted for the Benefit of his Suit, or any Part thereof, while the ſame is depending

depending in Court, ſuch Cauſe ſhall be thenceforth wholly diſmiſſed, and never after retained. And as a Party may be admitted *in Forma Pauperis* at any Time during the Suit; ſo if at any Time it be made out to the Court that he is of ſuch Ability, that he ought not to be *in Forma Pauperis*, the Court will *diſpauper* him. And in a Caſe of this Nature, where it was ſhewed to the Court, that a *Pauper* was in Poſſeſſion, and received the Rents of the Land in Queſtion, the Court order'd him to be diſpauper'd; tho' the Defendant in the Suit had a Verdict at Law, and might thereupon take out a Writ of Poſſeſſion, *&c.*

The Method and Practice of obtaining an Admiſſion *in Forma Pauperis*, is firſt to make an Affidavit before a Maſter in Chancery, that the Party is not worth Five Pounds, beſides the Matter in Queſtion, *&c.* and then to draw a Petition to the Lord Chancellor, or Maſter of the Rolls, praying to be admitted as a *Pauper*, and to have Counſel, a Clerk in Court, and a Solicitor, aſſigned him in his Cauſe, naming whom in the Petition. And the Party Complainant at the Bottom or in the Margin of his Petition, muſt have a Certificate under Counſel's Hand, ſignifying that he hath good Cauſe of Suit; except the Bill be already filed, ſetting forth the Cauſe, *&c.* and then there needs no Certificate; nor doth the Defendant in a Suit need any. When this is done, and the Affidavit annexed to the Petition, the Party preſents the ſame; and if there appears no Cauſe againſt it, my Lord Chancellor, or the Maſter of the Rolls, under-

writes an Order for the Party's Admittance, according to the Prayer of the Petition.

A Counſel, Clerk or Attorney, aſſigned to aſſiſt a *Pauper*, may not refuſe ſo to do; unleſs he ſatisfy my Lord, or his Honour, (who ordered the Admiſſion) with ſome good Reaſon for ſuch Refuſal. The Counſel who moves for a *Pauper*, ought to have the Order of Admittance with him, when he makes his Motion; and to move for him before he makes any other Motion: And that hinders him not from other Motions, he being allow'd as many beſides as he might have had without it. But if the Regiſter find that any one for whom a Counſel moves as a *Pauper*, was not admitted *in Forma Pauperis*; he ſhall not draw up the ſecond Motion of ſuch Counſel, but it ſhall be loſt for his Abuſe to the Court offered in the other Motion. *Ord. Canc.* 153.

It is ſaid the Admiſſion of a *Pauper* muſt always be produc'd in the Office, where the *Pauper* has Occaſion to paſs; tho' this ſeems now to be diſpenſed with. No Proceſs of Contempt at a *Pauper*'s Suit ſhall be ſealed, until ſigned by his Six Clerk in the Cauſe; who is to take Care that it be not vexatious or needleſs. If a Cauſe goes againſt a *Pauper*, he ſhall not pay Coſts to the Defendant; but he may be puniſhed perſonally, as the Court ſhall award; and the Law doth not aſſiſt *Paupers* to do Injury to others, by frivolous vexatious Suits, or by Delays, *&c.*

All Counſellors, Officers, Miniſters, Clerks and Solicitors in the Court, are to obſerve the foregoing Rules and Orders in Behalf of *Paupers*.

An

An Affidavit of a Pauper's Poverty.

Inter *A. B.* Quer. & *C. D.* Def.

'THE Complainant *A. B.* or Defendant '*C. D.* maketh Oath, that he is not 'worth in all the World, the Sum of 5 *l.* in 'Lands, Tenements, Goods, or Chattels, his 'Wearing Apparel, and the Matters of this Suit 'only excepted.

A Petition for One to be admitted in Forma Pauperis.

To the Right Honourable the Maſter of the Rolls, *&c.*

A. B. Plan. *C. D.* Def.

The Humble Petition of the Defendant Sheweth,

THAT your Petitioner being very Poor, as by the Affidavit annexed appears; and being ſerv'd with Proceſs to appear and anſwer at the Plaintiff's Suit, is by reaſon of ſuch his Poverty unable to make his Defence, unleſs he is admitted to defend his Suit *in Forma Pauperis.*

In tender Conſideration whereof, he humbly prays your Honour to admit him to defend this Suit *in Forma Pauperis*, and to aſſign him for his Counſel Mr. *W.* and Mr. *M.* and for his Six Clerk Mr. *E.*

And your Petitioner ſhall ever Pray, &c.

An Order for the Admiſſion of a Defendant in Forma Pauperis.

At the Rolls.

Maſter of the Rolls.

Mr. *H.*

Mr. *B.*

Die & Anno, &c. *Inter* A. B. *Quer.* & C. D. *Defend.*

IT is ordered that the Defendant, in Reſpect of his Poverty, of which Affidavit is made, be admitted to defend this Suit in this Court *in Forma Pauperis*; and Mr. *W.* and Mr. *M.* be aſſigned for his Counſel, and Mr. *E.* for his Six Clerk.

The

The PROCEEDINGS *and* PRACTICE *in the* Court of Equity *in Chancery, from the* Bill *and* Anſwer *filed to the* Decree *in the Cauſe: With Precedents of Bills, Anſwers, Pleas and Demurrers, Replications, Rejoinders, Interrogatories and Depoſitions, and Decrees,* &c. *in all Caſes.*

Of *Bills* exhibited in the Chancery, and Parties to Bills, *&c.*

NOW I advance to *Bills* and *Anſwers* in Chancery, with the Proceedings thereon to the final Order or Decree. And a Bill in Equity is in Nature of a Declaration at the common Law, wherein the Party Complainant is to ſet forth the Circumſtances of his Caſe, as for ſome Fraud, Force or Injury done him, praying Relief, and alſo Proceſs of *Subpœna* againſt the Party Defendant, to compel him to anſwer the Charge of the Bill; and if it be to quiet the Poſſeſſion of Lands, or to ſtay Waſte, or Proceedings at Law, he therein likewiſe prays a Writ of Injunction, *&c.*

In all Suits in Equity by *Engliſh* Bill great Care is to be taken that there be proper *Parties* named in the Bill; and if thoſe whoſe Right is concern'd, are not made Parties, the Defendant may demur to ſuch Bill; or if he doth not, the Court

Court will not proceed to a Decree; or if a Decree be made thereon, it may be reverſed. And Suits are here generally to be proſecuted and defended, by Parties in their own Names only; tho' by Leave of Court it may be done by others; as *Prochein Amys*, or Guardians, in the Caſe of Infants and Lunaticks, Committees in the Caſe Ideots, or Truſtees in Caſes of *Ceſtuy que Truſt*: So a Suit may be in this Court, either in the Party's own Right, or in Right of another, or in both their Rights: Of the firſt Sort are moſt Suits in the Chancery; and of the ſecond Sort are Suits by Executors, Adminiſtrators, Truſtees, *&c.* and of the laſt Sort are Suits of Baron and Feme, for Lands, *&c.* of the Wife's Right. Alſo Care muſt be had that whoſoever ſues in his own Right hath no legal Diſability upon him; as Outlawry, Excommunication, *&c.*

It is ſaid if the Legatee of a Term ſue for it in the Chancery, the Executor muſt be a Party to the Bill, tho' he hath aſſented to the Legacy: A Truſtee may in ſome Caſes bring a Suit in his own Name; but ordinarily *Ceſtuy que Truſt* is to be made a Party. The Wife may not commonly exhibit a Bill without her Husband; yet in Caſes of Separation, or ſome unreaſonable Dealing of the Husband, *&c.* ſhe may; and a Wife may ſue her Husband in this Court by her next Friend, for Performance of a Marriage-Settlement. Two Plaintiffs cannot join in one and the ſame Bill, where their Intereſts are ſeveral; and a Bill containing Things of diſtinct Natures, brought againſt two or more Perſons will be naught: But in a Bill for Tithes ſeveral Pariſhioners

ſhioners may be made Defendants to the Bill, becauſe they are of the ſame Nature; and ſometimes for avoiding Multiplicity of Suits, and to bring all Parties who may be affected before the Court, the Suit is by or againſt divers Parties, who have ſeparate Rights or Intereſts, as Deviſees, Creditors, and the like.

By Motion, of Courſe, the Plaintiff or Defendant may add Parties before Anſwer: On Cauſe ſhewn, any Time before Publication, the Court will ſuffer the Plaintiff to add Parties to his Bill; and without Coſts, if there be no Plea, *&c.* after Publication, before hearing, Parties may be likewiſe added: As they may after a Decree, before it is inrolled; on Petition ſetting forth their Rights are interwoven with the other Plaintiff's ſettled in general by the Decree: But if a Defendant be added after Publication, the Cauſe as to ſuch Defendant muſt be heard on Bill and Anſwer only. Before a Defendant hath anſwered, his Name may be ſtruck out of the Bill on the Plaintiff's Motion: If a Defendant diſclaims, or appears diſintereſted, his Name may be ſtruck out on Motion of either Party; ſo a Defendant may be ſtruck out at any Time before Hearing, but after Appearance it will be with Coſts, the Bill as to him being diſmiſs'd. A Plaintiff may be ſtruck out of the Bill at any Time before the Hearing, if thoſe left are ſufficient for Coſts. And one made a Plaintiff in a Bill without his Order, may renounce the Suit in Court; or give a Warrant to ſome Counſel to move and conſent that the Bill may be diſmiſs'd, *&c.*

Thus

Thus much for Parties to the Bill or Suit; generally when theſe are ſettled, the Bill is to be drawn: And according to the preſent Practice, you are now in the firſt Place to get the *Bill drawn* in Paper by ſome Counſel, or at leaſt it is to be peruſed by him, and his Hand ſet thereto. And by the Orders of the Court, no Counſellor ſhall put his Hand to any Bill, Anſwer, *&c.* unleſs it be drawn or peruſed by himſelf in the Paper-Draught before it be engroſſed; alſo Counſel are to take Care that the ſame be not ſtuffed with Repetitions of Deeds, Writings, *&c. in hæc verba*; but the Effect and Subſtance of ſo much of them only as is pertinent and material is to be ſet down, and that in brief Terms, without long and needleſs Traverſes of Points not traverſable, Tautologies, or other Impertinencies occaſioning Prolixity, to the End the ancient Brevity and Succinctneſs in Bills and other Pleadings may be reſtored and obſerved: And the Counſel are not to inſert therein any Matter merely criminal or ſcandalous, under the Penalty of good Coſts to be laid on ſuch Counſel, and paid to the Party injured before the Counſel ſhall be heard in Court. *Ord. Canc.* 113, 114.

If there be Matter ſcandalous in a Bill, a Maſter in Chancery on a Reference to him is to expunge it, and tax Coſts for the Party ſcandalized: And the Defendant may refuſe to anſwer ſuch Bill, till the Scandal and Impertinence be expunged; nor will the Court permit it to be expunged, but on Motion and a Certificate that the Coſts taxed are paid. But if on Reference

to

to the Maſter, he reports the Bill not ſcandalous, the Party procuring ſuch Reference ſhall pay Coſts therefore to the Plaintiff. Sometimes a Maſter will certify a Thing to be impertinent and ſcandalous, that he thinks to be *contra bonos mores*; as where a Counſel, in that Part of the Bill which charges a Confederacy, had called the Defendants *Brethren in Iniquity*, &c. this was certified to be ſcandalous or impertinent, and the Counſel forced to pay Coſts before the Bill could be amended. In other Caſes, if there be any Overſight in the Bill, which requires Amendment, before the Defendant's Appearance it may be amended on Motion, without paying Coſts; but if it be amended after Appearance, then Coſts muſt be paid.

As Bills in Chancery are uſually brought for ſuch Matters wherein the Plaintiff is without Remedy at Law; therefore they have theſe or the like Words in them, *viz.* *Forasmuch as your Orator is utterly Remedileſs in the Premiſſes, by the Rules of the Common Law*, &c. And if a Bill be to recover Writings, there muſt be an Affidavit made by the Plaintiff that he had ſuch Writings in his Poſſeſſion, but has caſually loſt them, and knows not where they are, unleſs they are come to the Hands of the Defendant; but if he certainly knows they are in the Defendant's Hands, the Affidavit may be to that Purpoſe.

After the Bill is drawn and ſigned by Counſel, it is to be engroſſed on double Twelve-penny ſtampt Parchment; and with the Bill ſo engroſſed, Application is to be made to one of the ſworn

ſworn Clerks in the *Six Clerk's Office* Chancery Lane, or it is to be engroſſed by ſuch Clerk, and then it is to be carried by the ſaid ſworn Clerk to one of the ſix ſuperior Clerks, who have diſtinct Appartments in the ſame Office, and he *files the Bill*, and makes a Certificate that it is filed according to the Statute; with which Certificate the Solicitor is to go to the *Subpœna* Office for *Proceſs of Subpœna*, *&c.* And the Bill ought to be ſigned by the ſaid ſuperior Six Clerk, and dated the ſame Day it comes into the Office; which is done by Writing on the Margin thereof towards the Top, thus: 7° *die Octobris Anno* 12° *Georgii Regis. E.* Alſo it is ordered, that no Six Clerk do preſume to antedate any Bill; and that no Under-Clerk ſhall keep any Bill by him, but with the firſt Opportunity he is to deliver the ſame to the Six Clerk, or in his Abſence to his Deputy, to be filed accordingly: Until which no Bill, Pleading, *&c.* ſhall be ſaid to be of Record or of any Effect in Court. *Ord. Canc.* 114.

The Plaintiff had formerly Time till the third Day at Noon, after the Return of the *Subpœna*, to file his Bill (the Return-Day being on the next Day after the Return of the *Subpœna*) which is the Coſts Day; and if the Bill came not into the Six Clerks Office the next Day after that, the Appearance being entered, and Coſts taxed the Day before, the Defendant was diſcharged with Coſts: But this encouraging Perſons to be troubleſome and vexatious, in ſuing out and ſerving *Subpœna's*, when they never intended to file any Bills againſt the Defendants; thereby

thereby drawing Defendants from the remoteſt Parts of the Kingdom, and creating a long and expenſive Attendance, *&c.* Therefore by the Statute 4 *&* 5 *Ann. c.* 16. theſe Rules are altered; for now no *Subpœna* or Proceſs for Appearance ſhall be had till after the Bill is filed, (except Bills for Injunctions to ſtay Waſtes or Suits at Law, *&c.*) and a Certificate brought under the Hand of the Six Clerk: And by the ſame Statute, upon a Plaintiff's diſmiſſing his own Bill, or the Defendant's diſmiſſing the ſame for want of Proſecution, the Plaintiff ſhall pay full Coſts to the Defendant, to be taxed by a Maſter, *&c.*

If two ſeveral Bills are filed by a Plaintiff againſt a Defendant, for the ſame Matter, one of them will be diſmiſt with Coſts; but where they contain divers Matters, *&c.* there the Defendant muſt anſwer both. A Bill was brought againſt Three ſeveral Defendants; and the Plaintiff therein ſet forth, that he was Keeper of ſuch a Caſtle, and pray'd that one of the Defendants might diſcover what Title he had to a certain Meadow Ground which belong'd to the ſaid Office of Keeper, and that the other Defendants by Cuſtom, *&c.* ought to pay the ſaid Keeper a certain annual Sum; and this Bill it is ſaid was diſmiſſed, becauſe it contained different Matters, and was brought againſt ſeveral Perſons, the Allowing of which would occaſion ſeveral Anſwers and Examinations; and if ſuffered, each Party would be obliged to take Copies of what no way concerned his own

Cauſe, whereby his Charge would be increaſed to no Purpoſe.

The Matter of a Bill regularly exhibited, will be taken as confeſſed, where a Defendant doth wilfully refuſe to anſwer the Bill, and ſtands out all Proceſſes of Contempt, *viz.* Attachment, Proclamation, Commiſſion of Rebellion, Serjeant at Arms, *&c.*

Beſides the common Bill in Chancery there are croſs Bills, Supplemental Bills, Bills of Enterpleader, Original Bills, Bills of Revivor, *&c.*

A *croſs Bill* is a Bill brought by the Defendant againſt a Plaintiff in a former Bill depending, touching the Matter of ſuch Bill. It muſt be brought before Publication is paſt on ſuch firſt Bill, and not after; except the Plaintiff in the croſs Bill will go to hearing upon the Depoſitions already publiſhed, becauſe of the Danger of Perjury if the Parties ſhould, after Publication of the former Depoſitions, examine Witneſſes *de novo* to the ſame Matter that had been before examined unto.

When a croſs Bill is put in, both Cauſes commonly proceed to be heard together, which cannot be if one Bill is filed after Publication in the other Cauſe. Where there are croſs Bills, the Defendant in the firſt Bill muſt generally anſwer, before he in the laſt ſhall be compelled to put in his Anſwer: And by the Courſe of the Court, the Plaintiff in the laſt Bill cannot have Proceſs of Contempt againſt the other till Eight Days after his own Anſwer is put in.

In

In Caſes of croſs Bills, after the firſt Bill is aſwered, the Plaintiff in ſuch Bill is to anſwer the Second Bill in Eight Days, *&c.*

A *Bill of Enterpleader* is a Bill that is brought by a Third Perſon, who not knowing to whom he ought of Right to render a Debt or Duty, fears he may be proſecuted or troubled by one of the Claimants thereof; and therefore prays that they may Enter-plead, and the Court determine to whom the Thing belongs, whereby the Party complaining may be rendered ſafe on the Payment. And there muſt be no Colluſion in the bringing of theſe Bills, of which Affidavit is to be made, annexed to the Bill, or upon filing thereof; alſo the Money muſt be brought into Court, till which be done the Court will not commonly ſhew the Plaintiff any Countenance, or order an Injunction of Proceedings.

And ſometimes a Bill of Enterpleader is, where one who is not a Party in the Firſt Suit, ſuppoſes he hath a ſeparate Intereſt in the Matter in Queſtion, and commences his Suit againſt the Firſt Defendant, praying to be relieved according to his Right; whereupon the Firſt Plaintiff makes the Second a Defendant, in order to Enter-plead and conteſt the Matter; or if the Firſt Plaintiff doth not make him a Defendant, the Defendant may exhibit his Bill againſt both Plaintiffs, and pray they may Enter-plead, and try to which of them the Thing in Demand belongeth.

A Mortgagor brought his Bill in Chancery to redeem; after came the Aſſignees of the Mortgagee with a Bill of Enterpleader; on which the Mortgagor made them Defendants to his Bill, and they anſwered that they were ready to receive the Money, *&c.* By the Enterpleader and Delay of Proceedings thereupon, the Mortgagor kept the Money by him two Years; and then he pray'd that he might pay it into Court, to ſave farther Intereſt, which the Court would not order, but gave Leave to the Mortgagor to ſet down the Cauſe for Hearing againſt all the now Defendants on Bill and Anſwer.

A *Supplemental Bill* is a Bill to ſupply the Defects of a former, when it is too late to amend the ſame. A Bill altered, before the Cauſe is at Iſſue, *&c.* is called an amended Bill; but if any Addition or Alteration be made after, it muſt be by another diſtinct Bill called a Supplemental Bill; and this muſt ſhortly recite the former Bill, and add, alter or ſupply what is neceſſary.

When any new Matter happens, pending the Suit, after Replication, or that the Cauſe is at Iſſue, which Matter is requiſite for the Plaintiff to ſet forth to the Court; this cannot be done by way of Amendment: So that in ſuch Caſe, on Affidavit made of the new Matter ariſing, the Court will give Leave to file a Supplemental Bill.

An *Original Bill* lies to put a Period to a temporary Decree, and to ſhew the Purpoſes of the Decree ſatisfied: Alſo to execute, or reverſe Decrees, *&c.*

And an Original Bill to execute a Decree of Lands againſt a Purchaſer, who claimed under Parties bound by that Decree, has been allowed good on Demurrer. Vide *Decree.*

Bills of Revivor, *Injunction*, and *Certiorari Bills*, are treated of under their ſeveral *Heads*: And formerly there were Bills brought for *Writs* of *Ne exeat Regnum*, *Homine Replegiando*, *Habeas Corpus*, *&c.* which were held to be Writs of Grace; but being remedial Writs, they may be now had upon Petition or Motion without any Bill filed.

In the *uſual Bill of Equity*, there are commonly nine ſeveral Parts obſerved, *viz.*

1. The Direction of the Bill, containing the *Title of the Judge*, and *Stile of the Court*; As to the *Lord Chancellor*, *Lord Keeper*, or *Lords Commiſſioners* of the Great Seal, *&c.* except where the Chancellor or Keeper is himſelf a Party to the Suit, and then the Direction is, To the *King's Moſt Excellent Majeſty*, in his High Court of Chancery.

2. The Introduction, as *Humbly Complaining ſheweth*, &c. and deſcribing the Plaintiff's Name and Place of Abode, Title or Addition, as Eſquire, Gentleman, *&c.*

3. The Premiſſes, and this is uſually by way of Recital, ſetting forth ſome former Tranſactions and Occurances antecedent to the Bill, and begins with the Word Whereas, *&c.* As *Whereas* about ſuch a Time a Deed was executed by ſuch Perſons, to ſuch and ſuch Purpoſes, *&c.*

4. The Allegations or Suggeſtions of the Bill, alledging, *That the Complainant* had done certain Things at the Defendant's Requeſt, or for his Benefit; or that the Defendant had done ſome Thing which he ought not to the Complainant's Prejudice; and this Part of the Bill being the Ground and Foundation of the Cauſe of Complaint, often conſiſts of many and divers Particulars.

5. The Complaint of Confederacy, Fraud, Injury, Oppreſſion, *&c.* and this is of Courſe, beginning thus; *But now ſo it is, may it pleaſe your Lordſhip*, &c.

6. The Clauſe that gives Cogniſance in Equity, wherein ſome Matter muſt be alledged, That the Complainant cannot have Relief at Common Law, and begins, *In tender Conſideration whereof and foraſmuch*, &c.

7. The interrogating Part, running thus; *And to the End the Defendant may true and perfect Anſwer make*, &c. and this generally recites, by Way of Interrogatory, the Subſtance of the Allegations of the Complainant.

8. The Prayer of the Bill, as to come to Account, pay Money due, perform a Contract, diſcover a Title, diſcover and deliver up Writings, deliver Poſſeſſion of Lands, *&c. And that the ſaid Defendant may do*, &c.

9. The Concluſion, which contains theſe Words of Courſe as pray Proceſs; *viz. May it pleaſe your Lordſhip to grant his Majeſty's Writ or Writs of* Subpœna, &c.

A Bill

A Bill in Chancery againſt Truſtees, to account and deliver up Writings.

To the Right Honourable *P.* Lord *K.* Baron of *Ockham*, Lord High Chancellor of *Great Britain.*

HUmbly Complaining, ſheweth unto your Lordſhip, your Orator *A. B.* an Infant under the Age of 21 Years, that is to ſay, of the Age of 18 Years and upwards, by *C. D.* of, *&c.* Gent. his next Friend and Guardian, *That Whereas T. B.* your Orator's Father deceaſed, was in his Life-time ſeiſed in his Demeſne as of Fee, of and in diverſe Lands, Tenements and Hereditaments ſituate, *&c.* of the Value of 200 *l. per Annum* and upwards; and being ſo ſeiſed, leaſed the ſame or a great Part thereof unto *E. F.* and *G. H.* of, *&c.* for a long Term of Years, in Truſt for raiſing 500 *l.* a-piece for *M. B.* and *E. B.* his younger Children, payable unto them at their reſpective Ages of 21 Years or Marriage, and Intereſt in the mean Time for their Maintenance until their Portions ſhould become due; that ſoon after the ſaid *T. B.* departed this Life, and left *L. B.* your Orator's eldeſt Brother, his Son and Heir, who alſo departed this Life about four Years ſince, leaving your Orator his next Brother Heir as well to him as the ſaid *T.* his Father; but after the Death of the ſaid *T.* during the Life of the ſaid *L.* and ſometime ſince his Deceaſe, the ſaid *E. F.* did act in the ſaid Truſt, and afterwards

aſſigned his Intereſt in the ſaid Lands and Premiſſes unto one *J. K.* in Truſt as aforeſaid; and your Orator further ſheweth to your Lordſhip, that the ſaid *T. B.* in his Life-time, and before the making of the ſaid Leaſe, did upon good Conſideration ſeal, and as his Act and Deed deliver a certain Deed either Poll or Indented, whereby he ſettled all the ſaid Lands, Tenements and Hereditaments upon ſome Perſon or Perſons therein named, to the Uſe of your Orator and his Heirs in general or ſpecial Tail, or to ſome other Uſe or Uſes whereby your Orator is entitled thereunto, had your Orator the ſaid Deeds to produce, the ſame being in the Hands, and Cuſtody of the ſaid *J. R.* or in the Hands or Cuſtody of ſome other Perſon or Perſons by his Delivery, Knowledge or Privity: *But now ſo it is*, may it pleaſe your Lordſhip, that the ſaid *J. K.* and *G. H.* under Colour of the Truſt by the ſaid Indenture of Leaſe and Aſſignment thereof created, or by ſome other Ways or Means, either as Truſtees, or pretended Guardians to your Orator in the Month of, *&c.* which was in the Year, *&c.* entred upon all the ſaid Lands, Tenements and Hereditaments, and then procured an Order out of this Honourable Court, to ſtop all the Rents of the ſaid Premiſſes which ſhould be due at, *&c.* then next following, in the Tenant's Hands, which Rents and all accruing Rents thereof they the ſaid *J. K.* and *G. H.* or one of them have, had, taken and received, being for, *&c.* Years, and converted to their or one of their own Uſe or Uſes; and your Orator having deſired from the ſaid *J. K.* a fair

and

and juſt Account of what he had received out of the ſaid Lands and Premiſſes, he hath refuſed to give your Orator any Copy of his Accounts, but put your Orator to a great Charge in procuring the ſame from a Maſter in Chancery, before whom only he pretends he is to account; beſides he pretendeth that he hath taken Journeys three or four Times a Year from his Houſe in *London* to the Lands in, *&c.* on purpoſe to receive the ſaid Rents, and keeps Horſes at your Orator's Charge for the ſame Purpoſe, ſo that his Expences, Riding Charges, and Pains amount to Half the Rents if not more, although the Defendant *G. H.* who is the other Truſtee, hath his Reſidence within four Miles of the Place where the Lands lie, *&c.* by which Means, your Orator and his Eſtate are brought in Debt, to your Orator's manifeſt Ruin, he the ſaid *J. R.* for the moſt part receiving the whole Rents, and being very poor and inſolvent ſpends them for his own Uſe, and confederates with, *&c.* and other Perſons unknown to your Orator, who when diſcovered, your Orator prays may be made Parties to the Bill with apt Words to charge them, to conceal the ſaid Deed of Settlement ſo made by your Orator's Father, which entitles your Orator to the Fee of the Premiſſes as aforeſaid, and refuſe to deliver the ſame to your Orator or to his Uſe, all which Actings and Doings of the ſaid *J. K.* and *G. H.* but eſpecially of *J. K.* are contrary to all Equity and good Conſcience; *In tender Conſideration whereof*, and foraſmuch as your Orator cannot diſcover the Truth of the Premiſſes, but by the Oath

Oath of the ſaid Confederates, neither can ſet forth the Contents of the Deeds of Settlement, or diſcover where the ſame are, nor make ſuch Proof of what Monies they or either of them have received out of your Orator's Eſtate, your Orator's Witneſſes to prove it being at, *&c.* And for that your Orator is remedileſs in the Premiſſes, ſave in this Honourable Court; *To the End therefore*, That the ſaid *J. K.* and *G. H.* may upon their Oaths true and perfect Anſwer make to all and ſingular the Premiſſes herein before ſet forth, as fully as if the ſame were again repeated and interrogated, and more eſpecially that they the ſaid *J. K.* and *G. H.* may upon their corporal Oaths ſet forth whether the ſaid *T. B.* did not make ſuch Deed or Deeds of Settlement as aforeſaid, and may deliver up to your Orator, as well the ſaid Deeds of Settlement, as all other Writings which concern your Orator's Eſtate, and come to a fair and juſt Account for all their Receipts and Diſburſements concerning the Premiſſes and make Proof thereof, and that your Orator's Eſtate may not be hereafter ſpent and waſted in Journies, nor come to the Hands of inſolvent Perſons, and that the ſaid *J. K.* and *G. H.* but eſpecially *J. K.* ſhall give Security as this Honourable Court ſhall direct for their juſt and true Performance of their Truſts, or immediately aſſign over their Intereſt to two ſuch others as your Orator ſhall nominate, and that in the mean Time the accruing Rents may remain in the Tenants Hands, or be otherwiſe paid, as your Lordſhip ſhall think fit, *&c.* And

that

that your Orator may be relieved in the Premiſſes according to Equity and good Conſcience.

May it pleaſe your Lordſhip, the Premiſſes conſidered, to grant to your Orator his Majeſty's Writ or Writs of *Subpœna* to be directed to the ſaid *J. K.* and *G. H.* and other their Confederates when diſcovered, thereby commanding them and every of them, at a certain Day, and under a certain Pain therein limited, Perſonally to be and appear before your Lordſhip in this Honourable Court, then and there to anſwer all and ſingular the Premiſſes, and to ſtand to, perform and abide ſuch Order, Direction and Decree therein, as to your Lordſhip ſhall ſeem meet.

And your Orator ſhall ever Pray, &c.

A Bill to diſcover a Leaſe, and Account for Rents.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth unto your Lordſhip, your Orator *A. B.* of, *&c. That whereas* about fifteen Years laſt paſt *M. B.* of, *&c.* did demiſe and grant to *C. D.* all that Meſſuage or Tenement, *&c.* and afterwards, that is to ſay, on the Day and Year *&c.* he the ſaid *C. D.* by his Deed bearing Date, *&c.* under his Hand and Seal, in Conſideration of the Sum of, *&c.* to him paid, did bargain, ſell aſſign and ſet over

over the ſaid Premiſſes, *&c.* unto *E. F.* which ſaid *E. F.* not long after, *viz.* on *&c.* did in Conſideration of, *&c.* by your Orator to him in Hand paid, bargain, ſell, aſſign, transfer and ſet over unto your Orator, all and ſingular the ſaid Meſſuage and Premiſſes abovementioned, and every Part thereof; upon which Bargain, Sale and Aſſignment of the ſaid Premiſſes ſo made as aforeſaid, your Orator well hoped to have peaceably and quietly entered into the ſaid Premiſſes, and to have held, occupied and enjoyed the ſame accordingly: *But now ſo it is*, may it pleaſe your Lordſhip, that one *T. L.* of, *&c.* pretending to have a Leaſe for divers Years yet to come of Part of the ſaid Premiſſes made unto him by *&c.* long before any ſuch Sale or Aſſignment made thereof to your Orator as aforeſaid, hath kept and doth ſtill keep your Orator out of the Poſſeſſion of the ſaid Premiſſes, on which Leaſe the ſaid *T. L.* pretends a certain Yearly Rent is reſerved to the ſaid, *&c.* his Executors or Aſſigns, which Rent (if any be) your Orator hath heard is, *&c.* and which your Orator, by Reaſon of the lawful Conveyance to him made as aforeſaid, ought in Equity and good Conſcience to have and receive, during ſuch Term as the ſaid *T. L.* ſhall hold and enjoy the Premiſſes aforeſaid, by Virtue of the ſaid Leaſe which he ſo pretendeth to have; but foraſmuch as your Orator doth not certainly know whether the ſaid *T. L.* hath any ſuch Leaſe, or if he hath any ſuch Leaſe, what Date the ſame beareth, nor what Term the ſaid *T. L.* hath therein unexpired, nor what Rent is there-

by

by reſerved, or what Covenants are therein contained; and for that your Orator cannot by the ſtrict Rules of Law enter into the Premiſſes, nor commence any Action againſt the ſaid *T. L.* either for the Recovery of the ſaid Land, or the Rent aforeſaid; and for that the ſaid *T. L.* doth not only uſe and occupy the ſaid Premiſſes to his own Profit and Advantage, without yielding or paying any Rent therefore to your Orator, but doth alſo utterly refuſe to ſhew his ſaid Leaſe, whereby he pretends to claim the Premiſſes aforeſaid, either to your Orator or to any other Perſon; and for that the ſaid *T. L.* in Confederacy with, *&c.* giveth out that, *&c.* all which Actings and Doings of the ſaid *T. L. &c.* are contrary to all Right, Equity and good Conſcience, and tend to the manifeſt Wrong, Injury and Oppreſſion of your Orator; *In tender Conſideration whereof*, and foraſmuch as your Orator is Remedileſs, ſave in this Honourable Court, and hath no ordinary Way by the Rules and Courſe of the Common Law, to enforce the ſaid *T. L.* to produce or ſhew to your Orator ſuch Writings as he hath for the holding and occupying the Premiſſes aforeſaid, but is altogether deſtitute of the Means to have a Sight of the ſame, but by the Aſſiſtance of this Honourable Court; *To the End* therefore, that the ſaid *T. L.* may be obliged upon his Oath to diſcover what Right he hath to the Premiſſes, or any Part thereof, and for what Rent or Rents he hath paid for the ſame, and to whom, and that he may alſo ſet forth in his Anſwer upon Oath a true Copy of ſuch Leaſe or other Writings,

tings, whereby he claimeth the Premiſſes aforeſaid, or any Part thereof; and that the ſaid *T. L.* may truly and directly anſwer all the Matters and Things herein before contained, as fully and perfectly as if the ſame had been here again repeated and interrogated, and may particularly ſet forth upon Oath whether, *&c.* and may come to Account for and pay, *&c.*

May it pleaſe your Lordſhip, &c. *to grant,* &c. *Proceſs prayed againſt* T. L.

A Bill for Diſcovery of what Title the Defendant hath in a Manor, and alſo of Incumbrances.

To the Right Honourable, *&c.*

HUmbly complaining, ſheweth, *&c.* your Orator the Right Honourable *W.* Earl of *B.* that *J. H.* Eſq; affirming to your Orator about a Year ſince, that himſelf and Sr. *W. M.* of, *&c.* were lawfully ſeized of an indefeaſible Eſtate in Fee-ſimple, or one of them, to them and their Heirs for ever, of and in the Manor of *A.* with the Rights, Members and Appurtenances thereof in the County of, *&c.* he the ſaid *J. H.* did propoſe the ſame to be ſold to your Orator, and did alſo affirm that the ſaid Eſtate and every Part thereof was free from all Mortgages, Charges and Incumbrances, except one Mortgage thereof made unto *G. P.* Eſq; or ſome others in Truſt for him, for the Sum of, *&c.* and did proceed to treat with your Orator for the abſolute Sale thereof, and did undertake

that the ſaid Sir *W. M.* and all and every other Perſon and Perſons concerned, who had or claimed any Right, Title, or Intereſt, in and to the ſaid Manor, or any Part thereof, ſhould join in the Conveyance thereof: And your Orator not doubting the Undertaking of the ſaid *J. H.* in or about, *&c.* laſt paſt, came to an actual Agreement with the ſaid *J. H.* for the abſolute Purchaſe of the Inheritance of the ſaid Manor, for the Sum of, *&c.* which your Orator was to pay in Manner following, that is to ſay, the Sum of, *&c.* unto the ſaid *G. P.* in full Satisfaction of his Mortgage, and the Sum of, *&c.* unto the ſaid *J. H.* and Sir *W. M.* being the Reſidue of the ſaid Purchaſe Money; and your Orator further ſheweth, that for ſecuring the Sum of, *&c.* unto the ſaid *G. P.* beſides the Manor of, *&c.* the Manor of *&c.* and other Lands and Hereditaments were made over to the ſaid *G. P.* or ſome others in Truſt for him, which were of a conſiderable Yearly Value, and the ſaid *J. H.* did requeſt of your Orator that the ſaid *G. P.* might aſſign and convey the ſaid Manor of, *&c.* and other the Hereditaments, which were made a Security for the Sum of, *&c.* over and above the Manor of, *&c.* to ſome Perſon or Perſons, ſo as the ſame might be diſcharged of the ſaid Mortgage, which your Orator conſented unto, and accordingly your Orator, or ſome other by his Direction, paid the ſaid *G. P.* the ſaid Sum of, *&c.* being Part of the Purchaſe Money agreed, as aforeſaid, to be paid unto the ſaid *G. P.* and thereupon by your Orator's Conſent, the ſaid *G. P.* did aſſign over all other the Manors,

nors and Hereditaments which he had in Security for the ſaid Sum of, *&c.* unto the ſaid *J. H.* or to ſuch Perſon or Perſons as the ſaid *J. H.* did direct and appoint; and your Orator well hoped that the ſaid *J. H.* and Sir *W. M.* would according to the Undertaking of the ſaid *J. H.* have joined in the Conveyance of all and ſingular the Premiſſes unto your ſaid Orator, and that your Orator and his Heirs might have held and enjoyed the ſame free from all Imcumbrances: *But now ſo it is*, may it pleaſe your Lordſhip, that your Orator having paid all or the greateſt Part of the Purchaſe Money, the ſaid *J. H.* and Sir *W. M.* contriving with one *L. W.* and ſeveral other Perſons to your Orator yet unknown (who when diſcovered, your Orator humbly prays, may be made Parties hereunto, with apt Names and Deſcriptions to charge them) to diſappoint and obſtruct your ſaid Orator of and in the ſaid Purchaſe of the ſaid Manor of *A. &c.* with the Appurtenances or ſome Part thereof, they the ſaid *J. H.* Sir *W. M.* and *L. W.* by the Contrivance aforeſaid, ſome or one of them, do refuſe to execute any Conveyance of the Premiſſes unto your Orator and his Heirs; whereas they do very well know that the ſaid *J. H.* did alledge and affirm to your Orator, that they, or ſome or one of them, had good and rightful Power to ſell and diſpoſe of the Fee-ſimple and Inheritance of the ſaid Premiſſes, and did agree that he or they, or ſome of them ſhould and would ſo do; and at other Times do pretend and give out, that they, or ſome of them, have the abſolute Inheritance of the ſaid Premiſſes, but

the ſame was ſo veſted in them in Truſt, and that what was tranſacted was without their Privity or Knowledge, and therefore they or ſome or one of them will not accept thereof, nor will ſeal any Deed or Writing relating thereto; and at other Times they ſay, that there are yet ſeveral Eſtates, Charges and Incumbrances which do or may affect the ſaid Premiſſes; all which Doings are contrary to Equity and good Conſcience, and tend to the apparent Prejudice of your Orator: *In tender Conſideration whereof*, and foraſmuch as your Orator can have no Relief in the Premiſſes, nor can compel the ſaid Parties to execute ſuch Conveyances of the Premiſſes as they ought, according to the Agreement aforeſaid, and the Truſt depending upon the Eſtates in them, until they or ſome of them ſhall diſcover what Charges or Incumbrances the ſaid Premiſſes are ſubject and liable unto, ſave only in this Honourable Court, where Matters of ſuch Nature are properly and only relievable, the rather for that ſuch Witneſſes as could prove all and ſingular the Premiſſes are either dead, or removed to Places to your Orator unknown; and for that your Orator well hopes the ſaid *J. H.* and the reſt of the Confederates, if thereunto called, will confeſs the Truth of the Premiſſes, to be as herein before ſet forth, and that your Lordſhip will find ſufficient Grounds to compel them, and every of them, according to the ſaid Agreement, to convey the ſaid Manor to your Orator and his Heirs; and that they, and every of them may ſet forth and diſcover whether they, or ſome of them,

and which of them, have not or pretend to have the Fee-ſimple or ſome Eſtate of Inheritance of and in the ſaid Premiſſes, or ſome Part thereof, and if ſo, from whom, what Eſtate, and how to them deſcended or come, and whether or no they know, or believe that any other Perſon or Perſons have or do claim any Eſtate, Right, Title or Truſt, of in or to the ſaid Premiſſes or any Part thereof; and if ſo, what Perſon or Perſons, and what Eſtate, from whom, and how, and whether they or any of them do know, believe or have heard of any Mortgage for any Term of Years or otherwiſe of the ſaid Premiſſes, or any Part thereof; and if ſo, for what Sum, and for what Term or Terms of Years, or otherwiſe of the ſaid Premiſſes or any Part thereof, to whom and by whom made, and whether they or any of them do know or have heard of any Truſt or Truſts, Judgment or Judgments, Statute or Statutes, or any Charges, Charge, Incumbrance or Incumbrances whatſoever, wherewith or whereby the ſaid Premiſſes, or any Part thereof, now is or hereafter may be moleſted, impleaded, charged, or incumbered; and if ſo, what Truſt or Truſts, and what Incumbrance or Incumbrances the ſame be, by whom made, and of what Value, and who hath or have, or ought to have the Benefit thereof; *and to the End* the ſaid *J. H. &c.* may true and perfect Anſwer make to all and ſingular the ſaid Premiſſes, *&c.*

May it pleaſe your Lordſhip to grant, &c.

A Bill

A Bill againſt a Mortgagor of Lands to diſcover his Title, brought by an Heir at Law.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth, *&c.* your Orator *A. B.* that *W. B.* deceaſed your Orrator's late Father, was in his Life-Time lawfully ſeiſed and poſſeſſed in his Demeſne as of Fee, of and in one Meſſuage or Tenement, *&c.* of the Value of 50*l. per Annum* or thereabouts, in the Pariſh of, *&c.* in the County of, *&c.* which ſaid Meſſuage and Premiſſes on his Death, did deſcend and come, as of Right they ought, unto your Orator as Son and Heir of the ſaid *W. B.* (your Orator being then and 'till now of late an Infant under the Age of 21 Years). *But now ſo it is*, may it pleaſe your Lordſhip, that *C. D.* of, *&c.* doth claim, and pretend to have ſome Title, Term, Eſtate or Intereſt in the ſaid Premiſſes or Part thereof, by or under ſome Deed or Grant made as the ſaid *C. D.* pretends by the ſaid *W. B.* your Orator's Father in his Life-Time unto him the ſaid *C. D.* whereas if any ſuch Deed, Grant or Eſtate was made by your ſaid Orator's Father, the ſame was but a Mortgage for the Security of ſome Sum, or Sums of Money; and all the Money intended to be thereby ſecured hath been long ſince paid and ſatisfied to the ſaid *C. D.* by his Perception of the Profits of the Premiſſes, who actually entered upon the ſame, and got Poſſeſſion thereof during your Orator's Minority, by Pretence and

Colour of ſome Conveyance or Aſſignment of the ſaid *W. B.* in his Right or in Truſt for him the ſaid *C. D.* or elſe that the ſaid Term or Eſtate is now expired; or in Caſe that the ſaid Eſtate be yet in Being, and that any Part of the Money intended to be thereby ſecured be remaining unſatisfied, your Orator is ready and willing to ſatisfy and pay the ſame; notwithſtanding which, the ſaid *C. D.* doth detain and keep the ſame from your Orator, and refuſeth to diſcover his pretended Title and Intereſt in the Law to the ſaid Meſſuage and Premiſſes, or by what Means he became poſſeſſed thereof: And your Orator further ſheweth, that the ſaid *C. D.* who during the Minority of your Orator enter'd upon the Premiſſes, and got Poſſeſſion thereof as aforeſaid, hath made and raiſed great Sums of Money out of the Rents, Iſſues and Profits of the ſaid Premiſſes, and refuſes to give any Account to your Orator for the ſame; and your Orator having no Counterpart of the ſaid Deed of Grant made by your Orator's ſaid Father to the ſaid *C. D.* is ignorant of the Contents thereof, nor can tell when the ſaid pretended Eſtate was to begin or end, or whether the ſame be expired or no, nor what Money was thereby ſecured to be paid, or to whom, or where; neither doth he know to whom the Intereſt in Law in the ſaid Term or Eſtate is ſince come: And the ſaid *C. D.* pretends, and gives out in Speeches, that he will hold and keep the Poſſeſſion of the Premiſſes as a forfeited Mortgage, and will take the full and ſtrict Advantage thereof in Law, ſo that your Orator is altogether remedileſs in the Premiſſes,

Premiſſes, ſave only by the Aid of this Honourable Court, where Matters of this Nature are properly relievable and determinable: *To the End therefore*, that the ſaid *C. D.* may upon his corporal Oath ſet forth and diſcover what Eſtate and Title he hath and claims in and to the ſaid Meſſuage and Premiſſes, and when the ſame was made, and to whom, and for what Term, and under what Proviſoes, Conditions, and Limitations, and what Money (if any) was intended to be thereby ſecured, and to whom, and when he entered upon the Premiſſes, and what he hath made and received by the Rents, Iſſues and Profits thereof, or otherwiſe towards Satisfaction and Payment of his Debt ſecured by the Premiſſes, if any ſuch Debt or Security was, and may account with your Orator concerning the ſame; and that he may produce his original Deed of Mortgage into this Honourable Court, and your Orator have a true Copy thereof; and that in Caſe the ſame ſhall appear to be ſatisfied, or otherwiſe if any Money ſhall be due upon the ſame, that upon your Orator's Payment of what ſhall appear to remain unſatisfied, he may ſurrender his ſaid Mortgage Deed or Eſtate, or otherwiſe aſſign and reconvey the ſame to your Orator, as your Lordſhip ſhall think fit and convenient; and that he may not be allowed to take any Advantage of the Forfeiture of the Mortgage (if any ſuch there be), and that your Orator may be relieved in all and ſingular the Premiſſes, according to Equity and good Conſcience.

May it pleaſe your Lordſhip to grant, &c.

A Bill for diſcovering an Eſtate real and perſonal kept by Fraud from the right Heir, and to give Poſſeſſion, &c.

To the Right Honourable, *&c.*

HUmbly, *&c.* ſheweth, *&c.* your Orator *A. B.* of, *&c.* Gent. Couſin and next Heir of *J. B.* of, *&c.* That the ſaid *J. B.* being in his Life-time, and at the Time of his Deceaſe, ſeiſed in Fee-ſimple, or of ſome other good Eſtate of Inheritance, to him and his Heirs, of and in the Manor of, *&c.* and divers other Lands, Tenements and Hereditaments within the Pariſhes of, *&c.* in the County of, *&c.* worth 300 *l. per Annum*, and upwards, and 6000 *l.* to be ſold and upwards; and being alſo poſſeſſed of a very conſiderable perſonal Eſtate to the Value of 1000 *l.* and upwards, he the ſaid *J. B.* in or about the Year, *&c.* died inteſtate, and without making any Diſpoſition of the ſaid Eſtate, and leaving no other Iſſue behind him but *C.* his Son and Heir, to whom the Eſtate after the Death of his ſaid Father did come and deſcend, tho' but then an Infant of tender Years, who ſhortly after the Death of his ſaid Father died without Iſſue of his Body, whereby the ſaid Premiſſes and Right of Adminiſtration to the ſaid *J. B.* and *C.* their perſonal Eſtate did deſcend and belong to your Orator, next Couſin and Heir to the ſaid *C.* and his ſaid Father *J.* (that is to ſay) as the Son of, *&c.* who was Uncle to the ſaid *J. B.* and your Orator by Reaſon of ſuch his Right and

and Title ought to have and enjoy the real and perſonal Eſtate of the ſaid *J. B.* *But now ſo it is*, may it pleaſe your Lordſhip, That *M. B.* the Widow and Relict of the ſaid *J. B.* who hath ſince intermarried with *W. J.* combining and confederating to and with *H. M.* &c. and with ſeveral other Perſons as yet unknown to your Orator, who as they ſhall be diſcover'd your Orator prays may be made Parties to this Bill with apt Words to charge them, how to defraud and diſinherit your Orator of the ſaid real and perſonal Eſtate of the ſaid *J. B.* They the ſaid Confederates or ſome of them did immediately after the Deceaſe of the ſaid *J. B.* enter into and ſeiſe upon all the real and perſonal Eſtate of the ſaid *J. B.* and have, or ſome of them hath, ever ſince enjoyed the ſame, and received the Profits thereof, and have ſold and diſpoſed of the ſaid perſonal Eſtate and converted the ſame to their own private Uſes; and now the ſaid Confederates do pretend and give out in Speeches, that the ſaid *J. B.* ſome Time before his Death, that is to ſay, on or about the Month of, *&c.* which was in the Year, *&c.* did make his laſt Will and Teſtament in Writing, and therein and thereby give and deviſe the Manor of, *&c.* aforeſaid, and all his Houſes, Lands, *&c.* in the Pariſhes of, *&c.* aforeſaid, in the ſaid County of, *&c.* unto the ſaid *M.* his Wife, and the ſaid *H. M.* &c. and to their Heirs and Aſſigns for ever; whereas your Orator doth here particularly charge, that the ſaid *J. B.* did either not make any Will, or ſuch Diſpoſition of the ſaid Premiſſes as aforeſaid; or he was at that Time ſo weak and imperfect in his

Underſtanding that he was not capable to make ſuch Will; but in Caſe this Honourable Court ſhall be ſatisfied that the ſaid *J. B.* did make ſuch Will and Diſpoſition of the ſaid Premiſſes, and was capacitated ſo to do, then your Orator doth charge, that ſuch Will, Diſpoſition and Bequeſt of the ſaid Premiſſes, was only to the Intent and Purpoſe to ſell and diſpoſe ſo much thereof, for the Payment of his Debts, as his perſonal Eſtate could not extend to pay, and that after ſuch Sale and Payment made as aforeſaid, the Reſidue of the ſaid real Eſtate was limited and appointed to go to his Son *C.* and his Heirs for ever, and for Want of Heirs of his Body to the right Heirs of the ſaid *J. B.* for ever, and made the ſaid *C. B.* Executor thereof; and the ſaid *C.* being ſince deceaſed without Iſſue of his Body, and alſo, *&c.* under whom your Orator claims as aforeſaid, your Orator is adviſed he is the next Heir at Law to the ſaid *J. B.* and as ſuch he is very well intitl'd to the ſaid Remainder of the ſaid Premiſſes, after all Debts are paid, in Caſe there be ſuch Will, and ought to have an Account from the ſaid Confederates of the real and perſonal Eſtate of the ſaid *J. B.* which they altogether refuſe to give, altho' in a friendly Manner requeſted ſo to do, but on the contrary do pretend that they either have ſold or muſt ſell all the ſaid Eſtate for the Payment of the ſaid *J. B.*'s Debts; whereas your Orator doth here particularly charge, that the perſonal Eſtate of the ſaid *J. B.* together with the Profits of the real Eſtate received by them, with the Money they have raiſed by Sale of ſome Part of the Pre-

miſſes, would have been ſufficient to have paid all his juſt Debts, with a great Overplus, if the ſame had been employ'd and laid out to that Purpoſe; for your Orator doth charge, that the ſaid *J. B.* was little or nothing indebted upon his own proper Account, or for his own Debts, but if there were any Debts, the ſame were Debts which he had engag'd himſelf in for ſome other Perſons, and the which Perſons were then able to have paid and diſcharg'd the ſame, if they had been carefully looked after; but now by the Negligence of the ſaid Confederates they are become inſolvent, and the ſaid Confederates would charge the ſaid Eſtate with the Payment of ſuch Debts, which your Orator hopeth this Court will not permit, but lay the Burden and Charge thereof upon the ſaid Confederates, where ſuch Miſcarriage and Default ſhall appear to this Honourable Court that there are any Debts of the ſaid *J. B.* yet ſtanding out and unpaid: And your Orator hopeth this Honourable Court, for the Preſerving of the ſaid Eſtate, and to keep it intire, will compel the ſaid Truſtees and Confederates to aſſign and tranſfer their Truſts and Eſtates to your Orator, upon your Orator's Payment or Undertaking the Payment of ſuch juſt Debts as are remaining unpaid; and your Orator doth further charge, That the ſaid Confederates by the Combination aforeſaid, to make a great Benefit to themſelves out of the ſaid Eſtate of the ſaid *J. B.* and to clog the ſame with the whole Debts which they pretend to be owing by him, they the ſaid Confederates have either made ſome Compo-

Compoſition of ſeveral of the ſaid pretended Debts, or there was ſome Abatement made thereof to them upon Payment of ſuch Debts, ſo as they were to have or had ſome Advantage thereby, or elſe ſuch Payments as they pretend were made, were only in Shew and falſe, and all or ſome Part thereof, was repaid to ſome of them, or to ſome Perſons for ſome of their Uſes, or they had ſome Gratuity or Reward for making Payment of ſome of the ſaid Debts, and yet the ſaid Confederates do pretend they have paid the Whole of ſuch Debts, and do deſign to charge the ſaid Eſtate with the whole Debts, and do refuſe to apply ſuch Abatement, Benefit and Advantage to the ſaid Eſtate, as in all Equity and Conſcience they ought to do, *&c.* all which Actings and Doings of the ſaid Confederates are contrary to Equity and good Conſcience, and tend to your Orator's manifeſt Oppreſſion and Diſinheriſon: *In tender Conſideration whereof*, and foraſmuch as your Orator is altogether remedileſs in the Premiſſes by the Courſe of the common Law of this Realm, or elſewhere but in a Court of Equity before your Lordſhip, where Matters and Practices of this Nature are properly examinable and to be relieved; and the rather, for that your Orator's Witneſſes who could prove the Truth of the Premiſſes, are either dead or beyond the Seas, or in Places remote and unknown to your Orator, ſo that your Orator cannot diſcover the Frauds and Practices of the ſaid Confederates, but by their Anſwers in this Honourable Court, whereunto when they ſhall be call'd, your Orator

tor hopes they will confeſs the Truth in all the Matters and Charges aforeſaid: *To the End therefore*, that the ſaid Confederates may upon their corporal Oaths true and perfect Anſwer make to all and ſingular the Matters and Charges aforeſaid, as if they were again particularly interrogated, and particularly that they may ſet forth whether your Orator be not next Heir at Law to the ſaid *J. B.* and *C.* his Son, or if they do not believe the ſame, and what Reaſon they have to believe to the contrary, and if they do know of any other Perſon, and who by Name, that is a nearer Heir to the ſaid *J. B.* and *C. B.* And if they do not believe or know that the ſaid *C.* is dead without Iſſue, and, *&c.* And may ſet forth if the ſaid *J. B.* was not ſeiſed of and enjoyed the Premiſſes aforeſaid, and was not reputed Owner thereof when he died, and what the ſame are or were worth by the Year for ten Years laſt paſt; and may ſet forth if the ſaid *J. B.* made ſuch Will as is pretended, and if he did, may ſet forth and diſcover how long it was made before his Death, and if he was ſenſible and had Capacity of making ſuch Will, or knew what he did when he order'd the ſame to be made, and alſo when he publiſhed the ſame, and if all his whole Mind, Inſtructions and Directions were inſerted therein, or if any other, and what Matter than what he directed was put in ſuch Will, and who writ the ſame, and if the ſaid Will they now ſet up was read to him in the ſame Form and Words it now remains and is in, or in ſome other, or in what Form or Words, and how long before he died it was ſo read

read, and did he then declare the ſame to be his laſt Will and Teſtament, and what other Words or Expreſſions did he uſe on Reading or Publiſhing ſuch Will, or if he knew what he then did or ſaid, or if he, or who elſe for him, did ſubſcribe his Name, or only his Mark, and who were the Witneſſes thereto, when he ſo publiſhed and ſubſcribed his Will, and alſo where were they and he when the ſaid Witneſſes ſubſcribed their Names to it as Witneſſes, and may diſcover the whole Manner and Formalities of Making and Publiſhing the ſaid Will, and how the ſame was done; and that the ſaid Confederates may ſet forth and diſcover if the ſaid *M.* or her ſaid Husband did not upon the Death of the ſaid *J. B.* enter into and upon all the ſaid Premiſſes they pretend to be deviſed to be ſold as aforeſaid; and if they or one of them, and who elſe beſides, have not ever enjoyed the ſame, or received the Rents and Profits thereof, and what hath been yearly made of the ſame, and what Part thereof hath been ſold and diſpoſed of, and when, to whom, for what, and how much Money; and if the ſame was a full and valuable Conſideration for ſo much as hath been ſold, and how the Money thereby raiſed, together with the Profits or Rents of the ſaid Premiſſes hath been employed and diſpoſed of, and to whom, and when, and for what; and that the ſaid Confederates may alſo ſet forth and diſcover the perſonal Eſtate of the ſaid *J. B.* and wherein it did conſiſt, and of what Value it was, and how much was upon Specialties or without, and by whom owing, and what ready Money or other

other Things there were, and how the ſame hath been employ'd, and what Debts due to the ſaid *J. B.* have been got in or recovered, and which are yet ſtanding out, and if ſuch perſonal Eſtate of the ſaid *J. B.* was not valued and appraiſed after his Death, and to how much it was ſo valued, and if it was not undervalued in ſome, and what Particulars, and if the Confederates or ſome of them did not ſeiſe upon ſuch perſonal Eſtate and make a Benefit thereof, and may diſcover how they have employ'd and diſpoſed of the ſame; and that the ſaid Confederates may ſet forth the juſt Debts of the ſaid *J. B.* and which of the ſaid Debts are paid or diſcharged, and which are yet unpaid and unſatisfied, and if ſome and which of the ſaid Debts have not been compounded, or ſome Abatement thereof made, or if ſome Advantage or Benefit did not thereby come to ſome, and which of the ſaid Confederates; and that the ſaid Confederates may ſhew Cauſe why they ſhould not come to an Account with your Orator for the perſonal Eſtate of the ſaid *J. B.* and the Money made thereof, and out of the Profits made of the ſaid Premiſſes, or any Part thereof, *&c.* and why they ſhould not transfer and aſſign their Eſtate and Truſt in the ſaid Premiſſes to your Orator and his Heirs, or to ſome other Perſon in Truſt for him, on your Orator's Undertaking and Paying the Reſidue of the ſaid *J. B.*'s Debts that are yet unpaid, in Caſe there be any ſuch; and that the Confederates may be ſtay'd by the Injunction of this Honourable Court from ſelling any more of the ſaid Premiſſes, and your Orator have the

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Poſſeſſion thereof, and that your Orator may be otherwiſe relieved in the Premiſſes as this Honourable Court ſhall Award and Decree.

May it pleaſe your Lordſhip to grant, &c.

A Bill to ſet aſide a fraudulent Will made of a conſiderable perſonal Eſtate.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth, *&c.* Your Orator *G. E.* of, *&c.* That *R. J.* late of, *&c.* Widow, had left her by the Will of *J. J.* her deceaſed Husband the Sum of 2000 *l.* in ready Modey, and all his Plate, Houſhold-Goods and Utenſils of Houſhold-Stuff, over and above his Debts, which amounted to upwards of 500 *l.* or ſome ſuch great Sum of Money, to diſpoſe of as ſhe pleaſed amongſt her Relations, *&c.* as by the ſaid Will of the ſaid *J. J.* now remaining upon Record in the Prerogative Court of *Canterbury*, and to which your Orator for greater Certainty refers himſelf, more at large appears. And your Orator farther ſheweth, That the ſaid *R. J.* having made a conſiderable Improvement of the Eſtate ſo left her by the ſaid *J. J.* her deceaſed Husband as aforeſaid, and being conſcious to her ſelf that it was the Deſire of her ſaid Husband, that the Eſtate ſo left her by him ſhould go to her neareſt Relations after her the ſaid *R. J.*'s Deceaſe, ſhe the ſaid *R. J.* did about the Month of, *&c.* which was in the Year, *&c.* ſend to your Orator

by *P. H.* one of her Maid-Servents, deſiring your Orator to come to her, being ſenſible ſhe drew toward her End, and that ſhe was obliged in Conſcience and by the Will of her deceaſed Husband, to leave all or the greateſt Part of her Eſtate to your Orator, as her next and neareſt Relation, your Orator being her Couſin-German, and make him your ſaid Orator Executor of her Will, the which the ſaid *P. H.* the Servant ſo ſent by the ſaid *R. F.* to your Orator as aforeſaid, often repeated to your Orator, and that ſhe came to your Orator thereupon, by Order of her Miſtreſs, who thought her ſelf obliged in Conſcience to leave to your Orator the greateſt Part of her Eſtate as aforeſaid, and to make him Executor of her Laſt Will and Teſtament, which ſhe was then deſirous to make, and ordered your Orator to bring a Perſon along with him that was qualified for that Purpoſe; and thereupon your Orator did immediately go and ſee the ſaid *R. F.* his Kinſwoman, and brought with him a Perſon qualified for making her Laſt Will and Teſtament, according to her Deſire, who received your Orator very kindly, and as a Token of her Kindneſs and Affection for your Orator, ſhe the ſaid *R. F.* did at that Time preſent and give unto your Orator the Gold Watch of her deceaſed Husband *J. F.* and deſired your Orator to requeſt the Scrivener he brought with him to take Inſtructions for the making of her Laſt Will and Teſtament in Writing, which was accordingly done, and approved of by the ſaid *R. F.* who did not only at that Time in the Preſence of her Maid-Servant

vant *P. H.* give your Orator an Account of what Money ſhe the ſaid *R. J.* had then in the Houſe by her, being ſeveral hundred Pounds, deſiring him to tell over the ſame, but alſo a full Account of her Debts and other Eſtate, *&c.* And then deſired your Orator to get the Inſtructions that were taken for her Laſt Will and Teſtament, to be writ fair in the Form of a Will, in Order to her approving of and executing the ſame, and thereupon your Orator at that Time took his Leave of her the ſaid *R. J.* leaving her to the Care and Charge of her Maid-Servant the ſaid *P. H.* And afterwards, *viz.* on or about the Day, *&c.* which was in the Year of our Lord, *&c.* Your Orator, together with the Perſon who took Inſtructions for the Drawing of her the ſaid *R. J.*'s Laſt Will and Teſtament in Writing, did go to the ſaid *R. J.* with a Draught of the ſaid Will, which was read over to and approved of by her, in the Preſence of her Maid-Servant *P. H.* and ſeveral other Perſons; by which Will the ſaid *R. J.* did bequeath to her ſaid Maid-Servant *P. H.* and ſeveral other Perſons, ſeveral conſiderable Legacies, and left your Orator her ſole Executor, as by the Draught of the ſaid Will ſo approved of by the ſaid *R. J.* as aforeſaid, now remaining in your Orator's Cuſtody, and ready to be produced to this Honourable Court, will more fully appear: And your Orator farther ſheweth, That the next Day after the Draught of the ſaid *R. J.*'s Will was approved of by her the ſaid *R. J.* your Orator and the Scrivener that drew the ſaid Will, went to the Houſe of the ſaid *R. J.* with the Will ingroſſed

groſſed fair, in order to have the ſame executed by the ſaid *R. J.* But the ſaid *P. H.* the Maid-Servant of the ſaid *R. J.* pretended to your Orator, that her Miſtreſs was then aſleep, and deſired your Orator to leave the ſaid Will with her, and ſhe would get it executed by the ſaid *R. J.* who was to keep the ſame by her till the Time of her Death; and thereupon you Orator did leave the ſaid Will with the ſaid *P. H.* not doubting but that ſhe would get the ſame executed accordingly by her ſaid Miſtreſs, and the rather for that ſhe the ſaid *P. H.* had a very conſiderable Legacy left her by the ſaid *R. J.* and more than could reaſonably be expected by any Servant that was no Relation: *But ſo it is*, may it pleaſe your Lordſhip, That the ſaid *P. H.* having gotten the Will ſo to be executed by the ſaid *R. J.* as aforeſaid, into her Cuſtody, immediately ſent for her Mother, and ſeveral other Relations of her the ſaid *P. H.* to be with her in the ſaid *R. J.*'s Houſe, and from that Day to the Time of the Death of the ſaid *R. J.* would never permit your Orator to ſee her, although ſhe well knew your Orator was the neareſt Relation the ſaid *R. J.* her Miſtreſs had in Being, and of the great Kindneſs and Affection that ſhe had to your Orator, and notwithſtanding your Orator went ſeveral Times to ſee his Kinſwoman before her Death; but the ſaid *P. H.* entring into a Combination and Confederacy to and with *R. C.* and ſeveral other Perſons Debtors to the ſaid *R. J.* and to and with divers others unknown to your Orator, whoſe Names when diſcovered, your Orator prays may

be made Parties to this his Bill, with apt Words to charge them, with an Intent to defeat and defraud your Orator of the greateſt Part of the ſaid *R. J.* her Eſtate, ſhe the ſaid *P. H.* by the Advice of ſome Ill-minded Perſons, as your Orator hath juſt Ground to believe, and doubts not but to prove and make out to this Honourable Court, did Cauſe a Will to be made by the ſaid Will which your Orator left with her to be executed by the ſaid *R. J.* and made her ſelf Executrix therein, and cauſed the ſaid *R. J.* to execute the ſame, inſtead of the Will your Orator left with her to be executed, wherein your Orator is left the ſaid *R. J.*'s ſole Executor, and ſome Days before the ſaid *R. J.* was buried, if not before the Breath was out of her Body, went to the Prerogative Office, and proved the ſaid Will as the Laſt Will and Teſtament of the ſaid *R. J.* without giving your Orator any Manner of Notice thereof, ſo that your Orator could not by any Means enter any Caveat or prevent the Probate of the ſaid fraudulent Will, ſo obtained by the ſaid *P. H.* as aforeſaid; and the ſaid *P. H.* by Virtue of the ſaid fraudulent Will, hath poſſeſſed her ſelf of the whole Eſtate of the ſaid *R. J.* conſiſting moſt of it in ready Money, Plate, Jewels, Bonds, Judgments, Leaſes, Mortgages, and all Manner of Houſhold-Goods, amounting to the Value of 4000 *l.* or ſome other great Sum of Money, without taking any Notice to your Orator, or giving your Orator any Account of the ſame, pretending that your Orator had only 10 *l.* left him by the ſaid fraudulent Will, and that the ſaid *R. J.* would have

have done better for your Orator, had not your Orator misbehaved himſelf, when in Truth the ſaid *P. H.* well knows the contrary, and that your Orator never any ways diſobliged the ſaid *R. F.* in her Life-time, and was never permitted to ſee the ſaid *R. F.* his Kinſwoman after he left the ſaid Will to be executed by her, as aforeſaid; all which Tranſactions and Doings of the ſaid Confederates are contrary to Equity and good Conſcience, and tend to your Orator's great Wrong and apparent Damage: *In tender Conſideration whereof*, and foraſmuch as your Orator hath no Relief againſt the fraudulent Proceedings of the ſaid *P. H.* but before your Lordſhip in this High and Honourable Court, where Frauds and Caſes of this Nature are properly relievable, and the rather for that your Orator wholly relies upon the Oaths of the ſaid *P. H.* and the reſt of the Confederates when diſcovered, for an ample and full Diſcovery of the Premiſſes, who when called thereto, your Orator well hopes, and doubts not, but that they will ſet forth and diſcover the Truth of the Premiſſes, *&c. To the End therefore*, that the ſaid *P. H.* may upon her ſeveral and reſpective corporal Oath, ſet forth and diſcover whether the ſaid *R. F.* did not in her Life-time ſend for your Orator, and own him to be her neareſt Relation, and declare that in Point of Conſcience ſhe was obliged to leave him the greateſt Part of her Eſtate, and make him Executor of her Laſt Will and Teſtament; and whether ſhe did not then in Token of her Kindneſs give your Orator her Husband's Gold Watch, and order ſome Per-

ſon to take Inſtructions for the drawing her Will, and whether your Orator did not bring a Scrivener along with him, who took Inſtructions and drew her Will, and whether the ſame was not read over and approved of by the ſaid *R. J.* and whether ſhe did not then give your Orator an Account of her Eſtate, and order your Orator to tell over the Money in the Houſe, *&c.* and whether ſhe did not then declare your Orator her ſole Executor, and whether your Orator with the Scrivener that drew the Will of the ſaid *R. J.* did not come with the Will fairly engroſſed in order to have the ſame executed, and whether ſhe did not then pretend her Miſtreſs *R. J.* to be a aſleep, and whether your Orator did not leave the Will with her for her Miſtreſs to execute, and whether ſhe would ever after permit or ſuffer your Orator to ſee the ſaid *R. J.* his Kinſwoman; and how ſhe got the fraudulent Will made and executed, and who were her Adviſers therein, and whether ſhe did not carry the ſame into the Prerogative Office, and prove it before the Death of the ſaid *R. J.* or how long after; and that the ſaid *P. H.* may ſet forth what Gold, Silver, Plate, Rings, Jewels, Bills, Bonds, Leaſes, Mortgages, Judgments and Extents, Houſhold-Goods, and Utenſils of Houſhold-Stuff, at the Time of the ſaid *R. J.*'s making her Will and your Orator Executor thereof, as is herein before ſet forth, was in the Houſe of the ſaid *R. J.* and what Part thereof was removed before the Death of the ſaid *R. J.* and what after her Death, and by whom the ſame was removed, and where, and what Part

is

is ſtill remaining in the Houſe where the ſaid *R. J.* died, and annex a Schedule to her Anſwer of the ſame, and thereby ſet forth the whole Eſtate of the ſaid *R. J.* with the Particulars and true Values thereof, and that ſhe may be compelled to bring into this Honourable Court the Will your Orator left with her to be executed by the ſaid *R. J.* his Kinſwoman; and that ſhe may ſhew Cauſe, if ſhe can, why the Eſtate of the ſaid *R. J.* ſhould not be decreed to your Orator, purſuant to the ſaid Will, and that the ſaid *P. H.* and *R. C.* and the reſt of the Confederates and Debtors to the ſaid *R. J.* in her Lifetime, may ſeverally ſet forth what Sum and Sums of Money they and every of them ſtand indebted for Principal and Intereſt to the Eſtate of the ſaid *R. J.* and ſhew Cauſe, if they can, why the ſame ſhould not be brought into this Court; and that the reſt of the Confederates when diſcovered, may anſwer all and ſingular other the Premiſſes, as if particularly interrogated; and that your Orator may be relieved therein, by the Decree of this Honourable Court, according to Equity and good Conſcience.

May it pleaſe your Lordſhip to Grant, &c.

A Bill to diſcover and deliver up Aſſets, and to account, &c.

To the Right Honourable, *&c.*

HUmbly, *&c.* ſheweth unto your Lordſhip, *A. B.* of the Pariſh of, *&c.* Widow and Relict of *R. B.* late of, *&c.* Eſq; deceaſed, and *M. B.* an Infant under the Age of 21 Years,

Daughter of the ſaid *R. B.* by *E.* his former Wife, who was Daughter of *C. D.* late of, *&c.* deceaſed, by the ſaid *A. B.* her Guardian, that the ſaid *C. D.* Grandfather of your Oratrix *M.* was in his Life-time, and at the Time of his Deceaſe, poſſeſſed of and intereſted in one Meſſuage or Tenement ſituate, *&c.* of the clear yearly Value of, *&c.* by Virtue of a Leaſe for a long Term of Years granted by, *&c.* And the ſaid *C. D.* was alſo in his Life-time, and at the Time of his Death, intereſted in and poſſeſſed of, *&c.* And was alſo at the Time of his Death poſſeſſed of a very conſiderable perſonal Eſtate, conſiſting in ready Money, Plate, Jewels, Goods, Houſhold-Stuff, Debts due for Rent arrear, and by Bonds, Judgments, Mortgages, and other Securities, and by ſimple Contract, *&c.* amounting to the Value of 10000 *l.* over and above the Leaſes before mentioned, and which was ſufficient to pay and ſatisfy all his Debts and Legacies, with a very great Overplus, he owing but very little at the Time of his Deceaſe; and the ſaid *C. D.* being poſſeſſed of ſuch Eſtate as aforeſaid, by his Laſt Will and Teſtament in Writing by him duly executed, and bearing Date on or about, *&c.* did give and deviſe ſome ſmall Legacies to and amongſt his Friends and Relations, and thereby give and deviſe unto your Oratrix M. *B.* the Legacy of, *&c.* to be paid, *&c.* and all the Reſt and Reſidue of his Goods and Chattels, Leaſes, *&c.* he gave and bequeathed unto, *&c.* and did make the ſaid *R. B.* Father of your Oratrix *M.* and *E. F.* and *G. H.* Executors in Truſt of his ſaid Laſt Will and Teſta-

Teſtament, and ſhortly after, about the Day, *&c.* died poſſeſſed of and entitled unto ſuch Eſtate as aforeſaid; after whoſe Death the ſaid *R. B.* your Oratrix's Father, only proved the ſaid Will, and took upon him the Execution thereof, your Oratrix *M.* and, *&c.* being all Infants, and your Oratrix's ſaid Father paid all her ſaid Grandfather's Debts and Legacies, ſave what was deviſed and given to her and, *&c.* as aforeſaid, and had ſufficient remaining in his Hands in and of perſonal Aſſets of the ſaid *C. D.* his Eſtate, to pay her and the ſaid, *&c.* without charging the Leaſhold Eſtates, and Chattels real deviſed to, *&c.* or any of the Rents or Profits thereof, from or after the Death of her ſaid Grandfather, with the Payment of the ſaid, *&c.* or any Part thereof: And your Oratrix further ſheweth, that the ſaid Executors did, after her ſaid Grandfather's Death, receive the Rents and Profits of the ſaid Leaſhold Eſtate, *&c.* and your Oratrixes farther ſhew unto your Lordſhip, that the ſaid *R. B.* and your Oratrix *A.* on or about, *&c.* intermarried, and about the Day, *&c.* then enſuing, the ſaid *R. B.* died, and having about, *&c.* made his Laſt Will and Teſtament in Writing, he did thereby give and bequeath unto his Brother *T. B.* &c. and did alſo thereby give and deviſe ſeveral other Legacies, *&c.* and all the Reſt and Reſidue of his Good, Chattels, Debts, *&c.* he did give and bequeath unto, *&c.* and did make and ordain his ſaid Brother *T. B.* Executor in Truſt of his ſaid Will, as in and by the ſaid Wills of the ſaid *C. D.* and *R. B.* if the ſame were produced,

would appear; and your Oratrix *A. B.* after the Death of the ſaid *R. B.* her Husband, finding his ſaid Will, freely permitted the ſame to be produced, being ſatisfied in her Conſcience that ſhe ought not to deſtroy or conceal the ſame, though ſhe did really believe that her Husband, being a Gentleman of known Integrity and Worth, never deſigned or intended it ſhould be his Laſt Will, but that he had forgotten the ſame, having often declared he would either buy Lands and ſettle them upon her, or that ſhe ſhould have a Share with his Children out of his own Eſtate, they being ſo well provided for by their Grandfather *C. D.* beſides the Share and Proportion which they might have with her out of their Father's Eſtate, which was very conſiderable, for that he the ſaid *R. B.* died ſeiſed in Fee of and in ſeveral Meſſuages, Lands and Tenements lying and being in ſeveral Places within the Kingdom of *England*, of the yearly Value of 800 *l. per Annum*, of which ſhe your Oratrix *A.* is dowable, and ought to have the Thirds thereof for her Life; and the ſaid *R. B.* was alſo poſſeſſed of, entitled unto, and intereſted in a great and conſiderable perſonal Eſtate, conſiſting of Chattle Leaſes for ſeveral long Terms of Years, of and in divers other Meſſuages, *&c.* and of and in other conſiderable perſonal Eſtate, in ready Money, Plate, Jewels, Houſhold-Goods, Debts, *&c.* amounting to, *&c.* and he the ſaid *T. B.* having gotten the ſaid Will into his Cuſtody, immediately took Poſſeſſion of all the real and perſonal Eſtates of the ſaid *C. D.* and *R. B.* and of all the Securities, Deeds,

Deeds, Leaſes, Counterparts of Leaſes and Writings whatſoever, of and belonging to the ſame, and would not permit or ſuffer your Oratrix *A.* to have or enjoy any Part or Parcel of the real or perſonal Eſtate of the ſaid *R. B.* her late Husband, but affirmed to your Oratrix that the ſaid *R. B.* her late Husband did not die ſeiſed of any real Eſtate whatſoever, of which ſhe might be endowed, or had any Right or Title of Dower unto; yet afterwards when the ſaid *T. B.* had proved the ſaid Will, and took upon him the Execution thereof, under the Truſt aforeſaid, he the ſaid *T. B.* under Pretence of Kindneſs to your Oratrix, did by Indenture dated, *&c.* demiſe and grant unto her the Dwelling-Houſe in, *&c.* wherein ſhe and the ſaid *R. B.* her Husband lived, which was Part of the perſonal Eſtate of the ſaid *R. B.* deviſed by him to, *&c.* for the Term of, *&c.* as by the ſame Indenture may appear; and thereupon your ſaid Oratrix did purchaſe and buy of the ſaid *T. B.* ſeveral Goods and Houſhold-Stuff of her ſaid late Husband then in the ſaid Houſe, and paid him the ſaid *T. B.* for the ſame the Sum of, *&c.* which was more than the ſame were worth to be ſold, and did alſo take your Oratrix *M.* into her Care, Cuſtody and Tuition, and about the Day of, *&c.* upon the Deſire and Requeſt of your Oratrix *M.* ſhe your ſaid Oratrix was committed to the Care, Education and Tuition of your Oratrix *A.* with whom ſhe ever ſince hath, and now doth reſide and live; and the ſaid *T. B.* hath allowed and paid what he thought fit for her Maintenance and Education,

and

and often promiſed to be juſt and true to her, and give her a juſt and true Account and Satisfaction of and for what belonged unto her of the Eſtates of her ſaid Grandfather and Father: *But now ſo it is*, may it pleaſe your Lordſhip, that the ſaid *T. B.* having poſſeſſed himſelf of all the ſaid real and perſonal Eſtates, as aforeſaid, and of all the Deeds, Writings and Securities, any ways relating to and concerning the ſame, and having received the Rents, Iſſues and Profits thereof ever ſince the Death of your Oratrix's Father, amounting to above, *&c.* and having made ſeveral Thouſand Pounds Profit and Advantage, by uſing and employing of the ſaid Eſtates, and putting forth the Money made thereof at Intereſt, and having no viſible Eſtate of his own to Anſwer and give Satisfaction of and for the Premiſſes aforeſaid, and deſigning and intending to defeat and defraud your ſaid Oratrix *M.* of her Right and Intereſt to her ſaid Grandfather's and Father's Eſtate, and your Oratrix *A.* of her Dower; and for that Purpoſe combining and confederating to and with, *&c.* they the ſaid Confederates do now pretend and give out in Speeches, that the whole Intereſt of the Leaſhold Eſtates, *&c.* belongs to, *&c.* and that the ſaid perſonal Eſtates of the ſaid *R. B.* belong to, *&c.* whereas your Oratrix *M.* is as nearly related to the ſaid *R. B.* as he, and thereby entitled equally with him, *&c.* and ought to have an Account and Satisfaction of and for the ſame; but the ſaid *T. B.* and, *&c.* to prevent and hinder the ſame and defeat her thereof, have ſtated the Accounts of the ſaid

Eſtates between them, and they pretend that he the ſaid *T. B.* hath paid and ſatisfied unto the ſaid, *&c.* all Monies due; whereas in Truth, if any ſuch Thing be, it is by Fraud and Colluſion, and not really and *bona fide* performed, and ought not to bind the Intereſt of your Oratrix *A.* and her Right of Dower to the Freehold Eſtate of the ſaid *R. B.* her late Huſband, nor the Right or Intereſt of your Oratrix *M.* in or to her deceaſed Grandfather's and Father's Eſtates, but the ſaid *T. B.* ought to make and render unto your Oratrixes an Account and Satisfaction therefore by and out of the ſaid Eſtates, as they are adviſed, and hope this Honourable Court will decree accordingly: And the ſaid *T. B.* &c. with farther Deſign to defraud your Orator *M.* of her Right and Intereſt, now claim and pretend, *&c.* and having gotten into their or one of their Hands, Power and Poſſeſſion, all the Leaſes, Counterparts of Leaſes, Securities for Money, Books of Account, Deedsand Writings, any ways relating to or concerning the Eſtates of your Oratrix's Grandfather and Father, they threaten, *&c.* and refuſe and deny to diſcover the reſpective Leaſhold Eſtates of your Oratrix's ſaid Grandfather and Father, *&c.* and where the ſaid Leaſehold Eſtates are and lie, and the Tenants and Undertenants thereof, and what Rents they reſpectively pay for the ſame, or to deliver up or give Copies of any of the Leaſes, Deeds or Writings of or belonging to the ſaid Leaſhold Eſtates, or either of them; or to diſcover the ſaid Freehold Land, and where the ſame lieth, and the yearly Value thereof, and

that

that your Oratrix *A.* may be endowed thereof, or to give any Manner of Account or Satisfaction of or for any of the Legacies ſo given by the ſaid Wills of your Oratrix *M.*'s Grandfather and Father to her your ſaid Oratrix as aforeſaid, or what Aſſets they have for Satisfaction or Payment thereof, or to give or make any Account or Diſcovery to your Oratrixes, or either of them, of or concerning all or any of the Premiſſes aforeſaid, contrary to Equity and good Conſcience: *In tender Conſideration whereof*, and for that your Oratrixes have no Relief in the Premiſſes by the ſtrict Rules of the Common Law, and Cauſes and Matters of this Nature are properly relievable before your Lordſhip in this Honourable Court, where your Oratrixes hope that the ſaid *T. B.* and, *&c.* will upon their Oaths ſet forth and diſcover the Truth of all and ſingular the Premiſſes, your Oratrixes Witneſſes that ſhould prove the ſame, being either dead or removed to Parts beyond the Seas, or unknown to your Oratrixes; *To the End therefore*, that the ſaid *T. B.* and, *&c.* may upon their reſpective corporal Oaths true and perfect anſwer and Account make and give of and to all and ſingular the Premiſſes aforeſaid, as if they were thereunto reſpectively particularly interrogated, and may ſet forth, produce and deliver into this Honourable Court, all the Deeds, Writings, Leaſes, Aſſignments, Counterparts of Leaſes, Bonds, Bills, Specialties, Books of Accounts, Mortgages, Judgments, Statutes, Recogniſances, and other Securities for Money whatſoever, and all other Eſcripts and Minuments

ments of what Nature or Kind ſoever, any way relating to or touching or concerning the Eſtates of the ſaid *C. D.* and *R. B.* and alſo the Real and Freehold Eſtate of the ſaid *R. B.* and the Contents, and yearly, and other true Values of the ſame, in each and every Particular, and may account with and give Satisfaction to your Oratrixes reſpectively, for and concerning all and ſingular the Premiſſes aforeſaid, according to Juſtice and Equity, and that your Oratrixes may be relieved in all and ſingular the Premiſſes, according to Equity and good Conſcience.

May it pleaſe your Lordſhip to grant, &c.

A Bill for the Diſcovery of a Marriage Settlement on a Wife, and for quiet Enjoyment of the Premiſſes.

To the Right Honourable, *&c.*

HUmbly, *&c.* ſheweth, *&c.* your Oratrix Dame *E. U.* Widow of Sir *R. U.* late of *&c.* in the County of, *&c.* Baronet deceaſed, that the ſaid Sir *R. U.* was in his Life-time ſeiſed in his Demeſne as of Fee, of and in the Manor and Manſion-Houſe of, *&c.* with the Demeſne Lands and Appurtenances in the County of, *&c.* worth of and in preſent Poſſeſſion 1000 *l. per Annum* and upwards, of which the ſaid Manſion-Houſe and Demeſnes and certain Lands, *&c.* thereto belonging are above 300 *l. per Annum*; and the ſaid Sir *R. U.* being ſo ſeiſed or pretending himſelf to be ſo ſeiſed, in Conſideration of a Marriage intended to be had between him and your Oratrix, by Indenture dated on or about,

bout, *&c.* in the Year, *&c.* made between him the ſaid Sir *R. U.* of the one Part, and *R. L.* and *W. B.* of, *&c.* of the other Part, for a ſufficient Maintenance and Livelioood for your Oratrix, in Caſe ſhe ſhould ſurvive the ſaid Sir *R.* and for other good Conſiderations, did demiſe and grant and to Farm let unto the ſaid *R. L.* and *W. B.* their Executors and Adminiſtrators the ſaid Manſion-Houſe of, *&c.* and Demeſne Lands aforeſaid, with the Appurtenances for 60 Years, if your Oratrix ſhould ſo long live, to commence immediately after the Death of the ſaid Sir *R. U.* which was in Truſt for your Oratrix, and with a *Proviſo* in the ſaid Indenture contained, that if your Oratrix ſhould bring any Action or Writ of Dower, to recover the third Part of any of the ſaid Lands of the ſaid Sir *R. U.* then the ſaid Leaſe or Term ſhould ceaſe, or to ſuch Effect; and the ſaid Sir *R. U.* did therein covenant for him and his Heirs, with the ſaid Truſtees for their quiet enjoying, during the ſaid Term, againſt all Incumbrances done by him, and for making farther Aſſurance by him and his Heirs, during your Oratrix her Life, as by the ſaid Indenture, or ſome Counterpart thereof in the Hands of, *&c.* or ſome other Perſon or Perſons, by their or ſome or one of their Delivery, Conſent or Privity, if produc'd, may more fully appear; and the ſaid Marriage, upon the Agreements and Covenants in the ſaid Indenture contained, was afterwards had and ſolemnized, and your Oratrix having continued his Wife for three Years or thereabouts, on or about the Month of, *&c.* in the Year, *&c.* the ſaid Sir *R. U.*

R. U. died, leaving your Oratrix no other Proviſion or Livelyhood, and your Oratrix expecting to have enjoyed the ſaid Manſion-Houſe and Premiſſes: *But ſo it is*, may it pleaſe your Lordſhip, that *T. U.* Eſq; *P. E.* Eſq; and Sir *A. U.* Son and Heir of the ſaid Sir *R. U.* by a former Wife, by Combination and Confederacy between themſelves, and with, *&c.* Children of the ſaid Sir *R.* by his ſaid former Wife, do withhold the Poſſeſſion of the ſaid Premiſſes from your ſaid Oratrix and the ſaid Truſtees for her, and do receive the Rents Iſſues and Profits thereof amongſt themſelves, but which of them in particular your Oratrix cannot diſcover, upon many feigned Pretences, the ſaid Sir *A. U.* ſometimes receiving all the Rents and Profits of the Premiſſes, and pretending ſometimes that the ſame belong to him as Heir in Tail, or by a Settlement in Marriage made by the ſaid Sir *R.* upon the Marriage of his Mother; whereas he knoweth that there was not any ſuch, or if there were, that the Premiſſes demiſed to the ſaid Truſtees for your Oratrix's Livelyhood, were not compriſed therein, or however that the ſaid Sir *R. U.* notwithſtanding any ſuch Marriage Settlement, had Power to make the ſaid Leaſe, and demiſe to the ſaid Truſtees as aforeſaid; and at other Times the ſaid Sir *A. U.* pretendeth to hold the Premiſſes, and receive the Rents, Iſſues and Profits of the ſame, by and under the ſaid *T. U.* and *P. E.* or one of them, and they the ſaid Sir *A. T. U.* and *P. E.* by the Combination aforeſaid, do pretend that the ſaid Sir *R. U.* many Years ſince did make ſome Leaſe of the Premiſſes

miſſes for 1000 Years, or ſome other long Term of Years yet in Being, to ſome Perſon or Perſons unknown to your Oratrix, which Term is come to them the ſaid *T. U.* and *P. E.* in Truſt to pay Portions for the ſaid younger Children of the ſaid Sir *R. U.* whereas if any ſuch Leaſe was made by the ſaid Sir *R. U.* to the ſaid Truſtees, the ſame was made colourably, either to prevent a Sequeſtration, or to mitigate a Compoſition in the late unhappy Troubles, the ſaid Sir *R.* having engaged for the King, or upon Truſt for the ſaid Sir *R. U.* Or if it were for the raiſing of Portions for the ſaid younger Children, the ſame was voluntary and fraudulent, or however the ſaid Portions are or might have been raiſed from the Time of the Commencement of the pretended Leaſe, by the Annual Rents and Profits, or caſual Rents and Profits, in making Leaſes upon Fines, and by Wood-Sales, and otherwiſe; for ſince the Date of the ſaid pretended Leaſe for 1000 Years, divers Leaſes have been made for Lives, or Years determinable upon Lives at the old Rents, and upon great Fines, which Leaſes have been enjoyed, and the old Rents paid, and divers Wood-Sales made, which ſaid Rents and Profits and Fines, upon Leaſes and Wood-Sales, and all other caſual Profits ought to be accounted for, and go in Diſcharge of the ſaid Portions, and any Neglect or Default therein ought not to turn to your Oratrix's Prejudice; but the ſaid Sir *A. U. T. U.* and *P. E.* and the ſaid other Children of the ſaid Sir *R. U.* ſome or one of them, having in their, ſome or one of their Hands, the ſaid original Leaſe and mean

Aſſignments, and the Deeds declaring the Truſt of the ſame, and the Counterparts of the Leaſes made ſince the ſaid Leaſe for 1000 Years, and the Terriers, Rentals, Books of Account, and other Writings manifeſting the Particulars of the Lands, and Values, Rents, Profits, Fines and Wood-Sales, do conceal the ſame from your Oratrix, and do by Combination aforeſaid threaten and terrify your Oratrix's Truſtees that they dare not enter upon the Premiſſes, nor will, for preventing Trouble to themſelves require an Account of the Premiſſes, and ſo your Oratrix is left deſtitute of a Livelihood, and dares not bring a Writ of Dower for any other Lands of which her Husband the ſaid Sir *R. U.* died ſeized, which are of good Value, and well known to the Confederates, but concealed from your Oratrix leaſt ſhe would endeavour to make void the ſaid Proviſion made for her by her ſaid Husband; all which Proceedings of the ſaid Confederates are contrary to Equity, and tend to your Oratrix's utter Ruin, for which ſhe is nevertheleſs remedileſs by the Common Law: *In tender Conſideration whereof*, and to the End that the Truth of all and ſingular the Premiſſes may be diſcover'd, and your Oratrix may quietly enjoy the Premiſſes aforeſaid, ſettled on her as a Proviſion and Livelihood by her ſaid Husband, or be otherwiſe relieved according to Equity and good Conſcience.

May it pleaſe your Lordſhip to grant, &c.

A Bill to compel the Execution of Articles for Sale of Lands to Pay Debts, alſo to convey the ſaid Lands, &c.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth, *&c.* your daily Orator *A. B.* that whereas *M. D.* of, *&c.* Widow, Relict and late Wife of *T. D.* *&c.* deceaſed, and *F. E.* of, *&c.* being or pretending to be ſeiſed in Fee-ſimple of and in the Meſſuage and Lands herein after mentioned, by Virtue of the Laſt Will and Teſtament of the ſaid *T. D.* and pretending that they had full Power to ſell and diſpoſe of the ſame, offered the ſame to Sale to your Orator; whereupon your Orator, after ſeveral Meetings and Treaties thereabout, contracted and agreed for the Purchaſe thereof for the Sum of, *&c.* and accordingly Articles of Agreement were drawn and executed, bearing Date, *&c.* whereby the ſaid *M. D.* and *F. E.* *&c.* in Conſideration of the ſaid Sum of, *&c.* to be paid by your Orator in Manner therein after-mentioned and herein after ſet forth, did covenant and agree with your Orator, that they would at your Orator's Coſts and Charges on or before, *&c.* then next coming well and ſufficiently convey and aſſure to your Orator and his Heirs, or to whom he or they ſhould appoint, and by ſuch Ways and Means as your Orator's Counſel ſhould adviſe, a good and indefeazible Eſtate of Inheritance in Fee-ſimple of and in all that Meſſuage or Tene-

Tenement, and all thoſe Lands, *&c.* and alſo all Ways, *&c.* And your Orator did therein covenant and agree with the ſaid *M. D. &c.* that your Orator would immediately after the perfecting the ſaid Conveyances, pay ſo much of the ſaid, *&c.* Purchaſe Money to *G. H.* of, *&c.* as ſhould be ſufficient to diſcharge a Mortgage he had thereupon made to him by the ſaid *T. D.* and the Remainder of the ſaid Purchaſe-Money was thereby agreed to be paid to the ſaid *M. D. F. E. &c.* or as they ſhould appoint, which Articles were mutually ſealed and executed as well by your Orator as by the ſaid *M. D. F. E. &c.* And your Orator farther ſheweth, that in Expectation the ſaid *M. D. &c.* would have made good and perform'd the ſaid Articles, and produced the Writings relating to their Title in and to the Premiſſes to your Orator's Counſel, he provided his ſaid Purchaſe-Money; but upon further Enquiry into their Title, he is informed that the ſaid *T. D.* in and by his ſaid Will deviſed the ſame to them and their Heirs only in Truſt, and to the Intent that the ſaid *M. D. F. E. &c.* ſhould ſell and diſpoſe of the Fee-ſimple and Inheritance of all or ſuch Parts of the ſaid Premiſſes as ſhould be ſufficient to pay and ſatisfy all his Debts, Legacies and Funeral Expences, as his Perſonal Eſtate ſhould fall ſhort to ſatisfy and diſcharge; and that if any Part of his Eſtate ſhould remain unſold, after all his Debts, Legacies and Funeral Expences ſhould be paid, the ſame ſhould remain to *&c.* and thereof conſtituted and appointed the ſaid *M. D. F. E. &c.* Executors; and your Orator further ſheweth

unto your Lordſhip, that the ſaid *M. D.* and *E. D.* and *K. D.* her Daughters, have entered into a Combination and Confederacy with the ſaid *G. H.* how to diſappoint and defeat your Orator of his ſaid Purchaſe, and to that End pretend and give out in Speeches, that the Perſonal Eſtate of the ſaid *T. D.* is more than ſufficient to pay all the ſaid *T. D.*'s Debts, Legacies and Funeral Expences, whereby they are wholly entitled to all the ſaid Premiſſes, and to the Intent they may be let into the Poſſeſſion of the ſaid Premiſſes, have procured the ſaid *G. H.* to aſſign his Mortgage to them, or ſome Perſons in Truſt for them, for a ſmall Sum of Money, on Pretence that the ſaid *T. D.* borrowed but a ſmall Sum of Money thereupon, which he had repaid in his Life-Time, all but the Intereſt thereof, and to colour ſuch Pretence the ſaid *M. D.* and *E. D.* and *K. D.* her Daughters, give out, that the ſaid *F. E.* hath joined in ſuch Aſſignment, and they the ſaid *E. D. &c.* the Daughters, do now ſometimes give out, that the ſaid *T. D.* made no Will, but died inteſtate, and that by his Death the ſame deſcended to them the ſaid, *&c.* as his Coheirs, and at other Times that the ſaid *T. D.* was not of ſound Memory when ſuch Will is pretended to have been made; and the ſaid *G. H.* pretends that he is a real Purchaſer of the ſaid Premiſſes from the ſaid *T. D.* in his Life-Time for a valuable Conſideration; and utterly refuſes to diſcover his Mortgage or what is due thereupon, or to produce the Writings relating to the Title of the ſaid Premiſſes; and the ſaid *M. D.* and *F. E. &c.* refuſe to execute

cute any Conveyance to your Orator, alledging that it is not ſafe for them ſo to do, unleſs the ſaid *E. D.* and *K. D.* her Daughters join therein, or they have the Decree of this Court for their Indemnity, all which doings of the ſaid Confederates are contrary to all Right, Equity and good Conſcience, and tend to your Orator's Wrong and Injury: *In tender Conſideration whereof*, and foraſmuch as your Orator cannot diſcover and detect any of the Frauds or Contrivances aforeſaid, or what Perſonal Eſtate the ſaid *T. D.* died poſſeſſed of, or what Debts he owed at the Time of his Death, or compel a due Execution of the ſaid Contract and Articles aforeſaid, but in this Honourable Court: *To the End therefore* that the ſaid Confederates may true and perfect Anſwer make to all and ſingular the Premiſſes herein before ſet forth, as fully as if the ſame were again repeated and particularly interrogated, and more eſpecially that they the ſaid *M. D.* and *E. D.* and *K. D.* her Daughters, and *F. E.* may upon their corporal Oaths ſet forth, whether the ſaid *T. D.* did not make ſuch Will as aforeſaid, or to that, or the like, or what Effect, and may ſet forth the full Subſtance and Contents of ſuch Will, and whether he were not *Compos Mentis* at the Time of making ſuch Will, and alſo ſet forth an exact Inventory of the Perſonal Eſtate of the ſaid *T. D.* that hath come to their Hands, Poſſeſſion or Knowledge, and may give an exact Account of the ſaid Perſonal Eſtate and how the ſame hath been employ'd, and what Debts the ſaid *T. D.* owed at the Time of his Death, and

how many and which of them are paid, and what remains yet unpaid, and whether they the ſaid *M. D. F. E. &c.* did not make ſuch Contract, and enter into ſuch Articles as aforeſaid with your ſaid Orator, for the Purchaſe of the ſaid Premiſſes as are herein before ſet forth, and ſhew Cauſe, if they can, why they ſhould not perform the ſame; and that the ſaid *G. H.* may ſet forth the Date and Contents of his Mortgage, and how much Money he lent the ſaid *T. D.* thereupon, and how much thereof hath been ſince paid, and what doth yet remain unpaid, or what other Title he claims in or to the ſaid Premiſſes contracted for as aforeſaid, and may be compelled on Payment of what remains yet unpaid to aſſign his ſaid Mortgage to your Orator, or to whom he ſhall appoint, free from all Incumbrances done by him, and that the ſaid *M. D. F. E. &c.* may be decreed to execute Conveyances to your Orator purſuant to the ſaid Contract and Articles, and that your Orator may be relieved in the Premiſſes according to Equity and good Conſcience.

May it pleaſe your Lordſhip to grant, &c.

A Bill

A Bill to be paid Debts out of an Eſtate, and be relieved where a Bond and other Writings were torn and defaced, without paying the Money due, and to prove a Will, &c.

To the Right Honourable, *&c.*

HUmbly, *&c.* ſheweth unto your Lordſhip, your Orator *P. M.* of, *&c.* that *M. M.* Brother to your ſaid Orator did by his Writing Obligatory dated, *&c.* acknowledge himſelf to be indebted to your Orator in the Sum of 100 *l.* of good and lawful Money of *Great Britain*, and by the ſaid Writing Obligatory did bind himſelf, his Heirs, Executors and Adminiſtrators, for the true Payment of the ſaid Sum of, *&c.* and the ſaid *M. M.* by his Note under his Hand, bearing Date, *&c.* did alſo acknowledge himſelf to be indebted to your Orator in the Sum of 70 *l.* being the Balance of an Account between him and your ſaid Orator; and the ſaid *M. M.* was alſo juſtly indebted unto *J. M.* another Brother of your ſaid Orator's at the Time of the Death of the ſaid *J. M.* which was about, *&c.* the Sum of 200 *l.* being Money lent to the ſaid *M. M.* by the ſaid *J. M. &c.* And your Orator further ſheweth, that the ſaid *J. M.* in his laſt Sickneſs, whereof he died, made a Nuncupative Will, and your Orator Executor thereof, which ſaid Will your Orator intended ſeveral Times to have proved in the Spiritual Court, but was prevailed upon by the Importunities and Inſinuations of the ſaid *M. M.* not to prove the ſame

during the Life of him the ſaid *M. M.* he the ſaid *M. M.* continually promiſing and aſſuring your Orator that he would ſpeedily pay or cauſe to be paid to your Orator the aforeſaid Sum of 200*l.* But after the Death of the ſaid *M. M.* *L. M.* Son of the ſaid *M. M.* intending to defeat your ſaid Orator of the ſaid Sum of 200*l.* without the Privity or Knowledge of your Orator, applied himſelf to the Spiritual Court in *London*, and by Fraud and Circumvention, without ever mentioning the ſaid Nuncupative Will, tho' he knew of the making thereof, and without mentioning that your ſaid Orator was in Being, or that your ſaid Orator was Brother to the ſaid *J. M.* and by telling the Judge of the Spiritual Court that he the ſaid *M. M.* was the only Relation alive to him the ſaid *J. M.* did obtain Letters of Adminiſtration of the Goods, Chattels, Rights and Credits of the ſaid *J. M.* upon theſe and other the like falſe Suggeſtions, in order to defeat your ſaid Orator of his ſaid Money which did belong to him as he was Executor of the ſaid Nuncupative Will; and your Orator further ſheweth, that from, &c. to the Time of the Death of the ſaid *M. M.* your Orator went very often every Year to him the ſaid *M. M.* and in a very friendly Manner deſired him to pay the ſeveral Sums of Money that he owed your ſaid Orator, and to even Accounts, which ſaid Sums the ſaid *M. M.* always acknowledged to be due and owing to your ſaid Orator, and promiſed Payment thereof, but deferred the ſame by telling your Orator, that he your ſaid Orator wanted not the Money, which indeed

indeed was true, and therefore desired your Orator to forbear him from Time to Time, but that he would honestly and justly pay your said Orator, and that in Consideration of his Kindness and Forbearance for the aforementioned Sums he the said *M. M.* would not only provide for and take Care to pay the Money owing your said Orator as aforesaid, but also by his Last Will and Testament would give your Orator a considerable Legacy, and for that Reason your Orator was not pressing for his said Monies due to him, and the said *L. M.* the Son of the said *M. M.* well knew of these Passages and Transactions between him the said *M. M.* and your Orator; and your Orator farther sheweth, that on or about the Day of, *&c.* in the Year, *&c.* the said *M. M.* made his Last Will and Testament in Writing, and made the said *L. M.* his Son Executor thereof, and within four Months after the said Will made, he the said *M. M.* departed this Life, leaving sufficient Assets to pay his Debts, and in and by the said Will the said *M. M.* did give and devise unto your Orator several Lands in the Parish of, *&c.* in the County of, *&c.* in the Possession of, *&c.* And by his said Will did also give to your said Orator, *&c.* And the very Words in the Will of the said *M. M.* which concern the Bequest made thereby to your Orator are as followeth: *I give and bequeath unto my Brother* P. M. *&c.* (here the Clause to be inserted *verbatim*) as by the said Will remaining in the Prerogative Court of *Canterbury*, Relation being thereunto had, doth more fully appear; and your said Orator very well

well deſerved the ſaid Lands given him by the ſaid *M. M.*'s Will, for that your Orator was very advantagious by his Advice given to him the ſaid *M.* in the Affairs of his Trade of, *&c.* in which your Orator was more vers'd and experienced than the ſaid *M. M.* and was thereby the making of him in his Wordly Eſtate, and this is likewiſe well known to the ſaid *L. M.* who hath been preſent ſeveral Times when your ſaid Orator had adviſed the ſaid *M. M.* what to do in his Trade, and he the ſaid *L. M.* hath ſeveral Times thank'd your ſaid Orator for his Advice and Aſſiſtance given to the ſaid *M. M.* his Father; and your Orator farther ſheweth, that there is a Codicil annexed to the ſaid Will of the ſaid *M. M.* and three Witneſſes to the ſaid Codicil, in theſe Words: *Whereas in my Laſt Will and Teſtament*, &c. (the Codicil here to be inſerted *verbatim*) as by the ſaid Codicil added to the ſaid Will of the ſaid *M.* M. doth and may appear; and your Orator further ſheweth, that ſince the Death of the ſaid *M. M.* the Will of him the ſaid *M. M.* hath been altered, obliterated and defaced, by ſome Perſons, and by ſome Ways and Means unknown to your Orator, the Names of which Perſons, and how the ſaid Will was altered, your Orator prays the ſaid *L. M.* may ſet forth, and the Bequeſts by the ſaid Will given to your ſaid Orator of the Premiſſes in, *&c.* are razed and ſtruck out, but yet ſo that the ſame with ſome Difficulty may be read, as in and by the ſaid Will, if the ſame were produc'd to this Honourable Court, would appear; and your Orator further ſheweth, that

ſoon

ſoon after the Death of the ſaid *M. M.* the ſaid *L. M.* the Son poſſeſſed himſelf of all the real and perſonal Eſtate of the ſaid *M. M.* and altho' your ſaid Orator hath ſeveral Times applied to the ſaid *L. M.* to ſatisfy and pay your ſaid Orator the aforementioned Sums and Damages for the ſame that were owing to him your ſaid Orator by the ſaid *M. M.* and to put your ſaid Orator into Poſſeſſion of the Premiſſes, which were deviſed to your Orator as aforeſaid, and he the ſaid *L. M.* at firſt ſeem'd to comply therewith, yet he the ſaid *L. M.* hath not performed any of the Matters aforeſaid; and your Orator further ſheweth, that he the ſaid *L. M.* and your Orator being one Day together at his Houſe ſoon after the Death of *M. M.* his Father, did deſire of your ſaid Orator, (who had made Mention of the aforeſaid Obligation of 100*l.* and that it was in his Pocket) that your ſaid Orator would ſhew him the ſaid Obligation, and your Orator putting the ſaid Obligation into the Hands of the ſaid *L. M.* he tore off the Seal of the ſaid Obligation, and bid your Orator take his Courſe in Law or Equity as he ſhould be adviſed, and when the ſaid Obligation was thus torn by him the ſaid *L. M.* there was not one Farthing of it ſatisfy'd, and the Money due thereon is all ſtill remaining behind and unpaid, *&c.* all which Proceedings of the ſaid *L. M.* are contrary to Equity and good Conſcience, and highly tend to the Loſs and Damage of your Orator, and your ſaid Orator being Remedileſs for the Matters aforeſaid, ſave in this Honourable Court before your Lordſhip, *&c. To the End therefore*, that the ſaid

ſaid *L. M.* upon his corporal Oath may true Anſwer make to all and ſingular the Premiſſes as if particularly interrogated and repeated, and more eſpecially whether the ſaid *M. M.* at the Time of his Death was not indebted to your ſaid Orator in the ſeveral Sums aforeſaid, and whether before his Death he made his Laſt Will and Teſtament in Writing, and who is made Executor thereof, and whether the ſaid Will ſince the ſame was made and publiſhed by the ſaid *M. M.* hath not been altered, blotted, obliterated, razed or defaced in any, and in what Part thereof, and if ſo, wherein, by whom, when and for what Reaſons was the ſame done, and whether the ſaid *M. M.* by the ſaid Will did not give ſuch or ſuch Legacies, and make ſuch or ſuch Bequeſts to your ſaid Orator as is before alledged; and may alſo ſet forth and diſcover where the ſaid Will now is, and may produce the ſame, and that your Orator may be permitted to examine his Witneſſes, and prove the ſame in this Honourable Court; and that the ſaid *L. M.* may alſo ſet forth whether the ſaid *L. M.* did not tear and deſtroy the ſaid Bond as aforeſaid; and may alſo ſet forth whether the ſaid *J. M.* the Brother of your ſaid Orator did not make a Nuncupatvie Will, and nominate your Orator Executor thereof; and that the ſaid *L. M.* may ſet forth and diſcover what Eſtate the ſaid *M. M.* died poſſeſſed of, intereſted in or intitled unto, and in what Particulars the ſame conſiſted, and how the ſame hath been applied, and where the Remainder now is, whether any of the Securities have been altered of the ſaid

M. M.

M. M. or whether elſe they remain as they did at the ſaid *M. M.*'s Death, and that your ſaid Orator may have a full and perfect Diſcovery and Account of the ſaid *M. M.*'s real and perſonal Eſtate, and that your Orator may be paid thereout what is juſtly owing to him from the ſaid *M. M.* and may be relieved in all and ſingular the Premiſſes according to Equity and good Conſcience.

May it pleaſe your Lordſhip to grant, &c.

A Bill to be relieved againſt a Bond entered into by Dureſs and Compulſion.

HUmbly, *&c.* ſheweth, *&c.* your Orator *A. B.* of, *&c.* That whereas *E. F.* Widow who departed this Life on the Day, *&c.* did by her laſt Will and Teſtament conſtitute and appoint your Orator and one *C. D.* Guardians of her Children *D. F.* and *M. F.* during their Minority, and the ſaid *C. D.* did afterwards, *viz.* about, *&c.* take upon himſelf the Diſpoſal of the perſonal Eſtate of the ſaid *E. F.* whereof ſhe died poſſeſſed, *&c.* and ſhortly after the Death of the ſaid *E. F.* one *A. W.* deſigning to get the ſaid perſonal Eſtate belonging to the ſaid Children into his Hands, did pretend that the Right of Adminiſtration of the ſaid perſonal Eſtate belong'd to him, and thereupon a Suit did ariſe in the Eccleſiaſtical Court, in which for and on Behalf of the ſaid Children, your Orator expended, *&c.* or thereabouts, in Defence of the ſaid Children and their Eſtate, *&c.*

But

But now ſo it is, may it pleaſe your Lordſhip, That the ſaid *D. F.* and *M. F.* the Children of the ſaid *E. F.* combining and confederating with the ſaid *A. W.* and one *B. C.* a Sheriff's Bailiff of, *&c.* in the County, *&c.* and contriving how to wreſt and extort a Sum of Money from your Orator on Pretence of, *&c.* he the ſaid *B. C.* did cauſe your Orator to be arreſted at the Suit of them the ſaid *D. F.* and *M. F.* or one of them, upon a Writ or Action for a great Sum of Money, although your Orator was no Way indebted to them, or either of them, they well knowing your Orator could not procure Bail to ſuch Action, and when your Orator was in Cuſtody they would not accept of a Warrant of Attorney for an Appearance, but threatned that they would keep your Orator in Gaol, unleſs he would give a Bond of 40 *l.* or ſome other great Penalty, with Condition for Payment of ſuch Sum as they, or ſome of them pleas'd to inſert therein, which your Orator remembreth not, and they or ſome of them prepar'd ſuch Bond, and threatned that your Orator ſhould never get out of the Priſon, if he did not ſign, ſeal and deliver the ſame to the ſaid Confederates, or ſome of them; upon which your Orator was forced and compelled, for the Gaining of his Liberty, to ſign, ſeal and deliver the ſaid Bond, and did by Dureſs ſign, *&c.* to them or ſome of them ſuch Bond as aforeſaid. But the ſaid *B. C.* on your Orator's Delivering of the ſame, did promiſe your Orator that your Orator ſhould be ſatisfied and allowed what he had paid and expended in the ſaid Suit in the Eccle-

Eccleſiaſtical Court as aforeſaid; notwithſtanding which Promiſe, they the ſaid Confederates do pretend and threaten that they will ſue your Orator on the ſaid Bond, and recover the Penalty thereof, although the ſaid Confederates well know that the ſaid Bond was obtained by the Means and Practices aforeſaid, and without any real or valuable Conſideration, and that your Orator is not indebted in any Thing to them or any of them, but that there is a conſiderable Sum of Money coming and owing to your Orator upon Account of his ſaid Diſburſements; and the ſaid Confederates do deſign to vex, trouble and oppreſs your Orator, by and under Colour of the ſaid Bond, and refuſe to allow or make to your Orator any Satisfaction for or in Reſpect of his Diſburſements, *&c.* aforeſaid, all which Actings and Doings of the ſaid Confederates are very unjuſt, and tend to the manifeſt Damage of your Orator, *&c.* *In tender Conſideration whereof*, and for that your Orator is remedileſs in the Premiſſes by the ſtrict Rules of the common Law, and can have no Relief therein, but in a Courſe of Equity before your Lordſhip in this Honourable Court, *&c.* *To the End therefore*, that the ſaid Confederates and every of them, may upon their corporal Oaths, full, true and perfect Anſwer make, *&c.* and that they and each of them may particularly ſet forth for what Cauſe your Orator was arreſted, and for and upon what Conſideration the ſaid Bond was given, and to whom, and what is the Date, Penalty and Condition thereof, *&c.* and whether the ſaid *B. C.* did not promiſe

your Orator that before the ſaid Bond was ſued, your Orator ſhould be paid and ſatisfied his Expences and Disburſements, or to that Effect; and that all Proceedings at Law may be ſtay'd on the ſaid Bond, and the ſame may be ordered by Decree of this Court to be delivered up to your Orator to be cancelled, and your Orator be relieved in all and ſingular the Premiſſes according to Juſtice and Equity.

May it pleaſe your Lordſhip to grant, &c.

A Bill to be relieved againſt a Bond and Judgment fraudulently entered, &c.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth, *&c.* your Orator *A. B.* of, *&c.* That whereas your Orator on or about, *&c.* together with one *C. D.* and *E. F.* became bound in one Bond or Obligation of 500 *l.* Penalty or thereabouts unto *G. H.* Marſhal of, *&c.* with Condition that the ſaid *C. D.* ſhould be and continue a true Priſoner unto the ſaid *G. H.* during the Time of his Impriſonment, until he ſhould be therefrom lawfully diſcharged, the Condition of which Bond is as followeth, or in Words to the like Effect, *viz. The Condition of this Obligation is ſuch*, &c. (reciting the Condition), and your Orator, together with the ſaid *C. D.* and *E. F.* did alſo at the ſame Time ſeal and deliver one other Writing, in Nature of a Warrant of Attorney, to confeſs a Judgment on the ſaid Bond

of 500 *l.* with a certain Clauſe or Clauſes therein mentioned, that if the ſaid *C. D.* ſhould make an Eſcape out of the Cuſtody of the ſaid *G. H.* his Deputy or Servant, and the ſaid *G. H.* was thereby damnified, that then it might be lawful for him the ſaid *G. H.* by his Attorney to enter up Judgment againſt your Orator, and the ſaid *C. D.* and *E. F.* ſeverally: *Now ſo it is,* may it pleaſe your Lordſhip, that *J. K.* of, *&c.* under Pretence of an Eſcape of the ſaid *C. D.* as your Orator is inform'd, hath brought a Bill or Declaration againſt the ſaid *G. H.* for 200 *l.* Debt and Coſts of Suit, to which Bill is pleaded a freſh Purſuit and Retaking of the ſaid *C. D.* and no further Proceedings thereupon had, and ſince that the ſaid *J. K.* by Connivance, Subtilty and Fraud hath procured the ſaid *G. H.* to aſſign to him or to his Uſe the ſaid Bond and Judgment, *&c.* to the utter Ruin of your Orator, unleſs relieved by this Honourable Court; and your Orator further ſheweth, That in all ſuch Caſes where the ſaid *G. H.* is ſued as *Marſhal of the King's Bench,* &c. for the Eſcape of any Priſoner, it is and hath been the Cuſtom of the ſaid *G. H.* to permit ſuch Priſoner or his Security to defend the ſame, and no Security is or ought to be aſſigned before Verdict and Judgment obtained againſt him the ſaid *G. H.* as Marſhal of the ſaid Priſon, and your Orator did deſire and requeſt the ſaid *G. H.* that he might have Liberty to defend himſelf in that Suit brought againſt him the ſaid *G. H.* by the ſaid *J. K.* and did offer that if the ſaid *G. H.* were condemned therein, that then your Orator would

pay and diſcharge all ſuch Money, *&c.* as the Court ſhould adjudge againſt him; and your Orator doth aver, That all Charges and Coſts of Suits have been paid by the ſaid *C. D.* the Priſoner, and that the ſaid *J. K.* hath given the ſaid *G. H.* a Diſcharge for the ſame; all which your Orator doubts not to prove to this Honourable Court, notwithſtanding which the ſaid *G. H.* hath entered up and doth threaten to ſue your Orator upon the ſaid Judgment, *&c.* contrary to all Equity and good Conſcience: *In tender Conſideration whereof*, and for that your Orator can have no Relief but before your Lordſhip in this Honourable Court againſt the ſaid Judgment moſt wrongfully and unjuſtly enter'd as aforeſaid, for that your Orator's Witneſſes which could prove the Premiſſes, are either dead or gone to Places unknown to your Orator, *&c. And to the End* the ſaid *G. H.* and *J. K.* and either of them may upon their ſeveral corporal Oaths Anſwer make to all the Matters and Things in this Bill charged, and many particularly ſet forth when ſuch Eſcape was made as is pretended, and how long ſince a Bill or Declaration was brought againſt the ſaid *G. H.* and whether the ſaid *C. D.* was not in Priſon long before, and at that Time, and whether he be not now in Priſon under the ſaid *G. H.*'s Cuſtody at the Suit of the ſaid *J. K.* and whether a freſh Purſuit was not pleaded to the ſaid Declaration by the ſaid *G. H.*'s own Order, and whether it is and has been a Cuſtom for the ſaid *G. H.* to allow the Priſoner or his Security to defend any Suit brought againſt him for an

Eſcape,

Eſcape, and whether your Orator did not deſire to have that Liberty, and what the ſaid *G. H.* is or was damnified before he aſſigned over your Orator's Security, and whether he and his Attorney were not paid all Fees, Charges, *&c.* for defending the ſaid Suit, by the ſaid *C. D.* the Priſoner, and what Conſideration the ſaid *G. H.* or any to his Uſe had, or is to have for aſſigning over your Orator's Bond and Judgment; And to the End, that the Truth may more plainly appear, it is humbly pray'd, that all the Writings in this Bill mentioned may be brought into Court, and the ſaid Bond and Judgment vacated, and that your Orator may be relieved in all and ſingular the Premiſſes according to Equity, *&c.*

May it pleaſe your Lordſhip to grant, &c.

A Bill to ſubject Lands to pay off and ſatisfy a Judgment.

To the Right Honourable, *&c.*

HUmbly, *&c.* ſheweth, *&c.* your Orator *J. H.* of, *&c.* Executor of the Laſt Will and Teſtament of *E. G.* who was the Relict and Executrix of the Laſt Will and Teſtament of *J. G.* late of, *&c.* that one *L. G.* being heretofore indebted unto *J. B.* in the Sum of 600 *l.* or ſome ſuch Sum, and not having money to pay it, did offer to give Security for the ſame by ſuffering or acknowledging a Judgment to the ſaid *J. B.* or any other Perſon in Truſt for him,

whereupon the ſaid *J. B.* did direct him the ſaid *L. G.* to give or acknowledge a Judgment for the ſame in the Name of the ſaid *J. G.* and accordingly the ſaid *L. G.* did acknowledge or ſuffer a Judgment to be recovered againſt him in *Eaſter* Term, in the Year of the Reign, *&c.* for 600 *l.* Debt beſides Coſts of Suit, at the Suit and in the Name of the ſaid *J. G.* as by the Records of the ſaid Court of, *&c.* may more fully appear; which ſaid Judgment was nevertheleſs taken in the Name of the ſaid *J. G.* in Truſt for the ſaid *J. B.* And your Orator further ſheweth unto you Lordſhip, that the ſaid *J. B.* having Occaſion to take the Sum of 200 *l.* at Intereſt, did apply himſelf to your Orator *J. H.* to borrow the ſame, and propoſed as a Security for Repayment thereof, not only to give his Bond in the Penalty of 400 *l.* but alſo to cauſe the ſaid Judgment ſo as aforeſaid had and obtained againſt the ſaid *L. G.* in the Name of the ſaid *J. G.* to be aſſigned to your Orator; and thereupon your ſaid Orator did lend unto him the ſaid *J. B.* the ſaid 200 *l.* and for Security thereof the ſaid *J. B.* did enter into a Bond or Obligation, bearing Date, *&c.* of the Penalty of 400 *l.* and did alſo cauſe the ſaid *J. G.* by a certain Indenture or Deed bearing Date, *&c.* to grant, bargain, aſſign and ſet over unto your Orator his Executors and Adminiſtrators, as well the ſaid Judgment of 600 *l.* and Coſts, as alſo all the Benefit, Profit, Advantage, Sum and Sums of Money, *&c.* that could or might be had, obtained or gotten, by Virtue of the ſaid Judgment, or by any Execution, Proceſs or Ex-

tent to be ſued thereon, and thereby conſtituted and appointed your Orator his lawful Attorney to ſue forth and proſecute any Execution or Proceſs for the Recovery of the ſaid Debt and Coſts againſt the ſaid *L. G.* And in and by the Condition of the ſaid Bond (wherein the Aſſignment of the ſaid Judgment is recited) the ſaid Bond and Aſſignment were to be void, in caſe the ſaid *J. B.* his Executors or Adminiſtrators ſhould pay or cauſe to be paid to your Orator the ſaid 200 *l.* and Intereſt at certain Times in the ſaid Condition of the ſaid Bond expreſſed, as by the ſaid Bond or Obligation and Condition thereof, and the Aſſignment of the ſaid Judgment in the Cuſtody of your ſaid Orator ready to be produced to this Honourable Court, more fully appears; and your Orator further ſheweth, that the ſaid *J. B.* did not pay the ſaid 200 *l.* and Intereſt according to the Condition of the ſaid Bond, whereby the ſame Bond and Aſſignment became abſolute; nevertheleſs your Orator did agree with the ſaid *J. B.* that in Caſe he ſhould and did recover and receive all or any Part of the Money due on the ſaid Judgment, of and from the ſaid *L. G.* or that the ſaid *J. B.* ſhould and would afterwards pay the ſaid Principal and Intereſt due on the ſaid Bond to your Orator, and pay ſuch reaſonable Coſts and Charges as he ſhould or might be put unto in recovering his Money, he your Orator would deliver up the ſaid Bond to be cancelled, and account with him concerning the Premiſſes, *&c.* and aſſign the ſaid Judgment, as he the ſaid *J. B.* ſhould think fit; And your Orator further ſheweth unto your

Lordſhip, that he the ſaid *L. G.* at the Time of his acknowledging, or ſuffering the ſaid Judgment to be recovered againſt him, was ſeiſed in his Demeſne as of Fee-ſimple, or of ſome other good Eſtate of Inheritance of and in certain Lands and Tenements, *&c.* in the County of, *&c.* of a conſiderable yearly Value, nevertheleſs was ſo ſtraitned for Money, that he did not pay off the ſaid Judgment, but prevailed with the ſaid *J. B.* to continue the ſame, and not take Advantage thereof, *&c.* And after the Aſſignment of the ſaid Judgment to your Orator, he the ſaid *L. G.* did make the like Requeſt to your ſaid Orator, and alſo to the ſaid *J. B.* that they would not extend his Lands, nor take out any Execution againſt his Perſon or Goods upon the ſaid Judgment, and did then likewiſe promiſe as ſpeedy Payment as he could raiſe Money, and accordingly he the ſaid *L. G.* did on or about, *&c.* pay unto your Orator the Sum of 50*l.* in part of the Money then due on the ſaid Judgment, and towards his your ſaid Orator's principal Sum of 200*l.* and Intereſt, and the ſaid *L. G.* did afterwards make ſeveral Promiſes of Payment of the Reſidue of the Money due on the ſaid Judgment, *&c.* but being involved in ſome great Troubles, that he could not conveniently pay the ſame, did farther prevail with your Orator, and the ſaid *J. B.* to forbear taking out Execution upon the ſaid Judgment, *&c.* And before the ſaid *L. G.* paid any farther Part of the ſaid Debt, he died ſeiſed of ſuch real Eſtate as aforeſaid, and alſo poſſeſſed of a good and plentiful perſonal Eſtate, conſiſting of ready Money,

Money, Plate, Jewels, Houſhold-Goods, *&c.* and of and in divers Horſes, Oxen, Cows, Sheep and other Cattle, and divers Quantities of Corn, Grain and Hay, and of and in divers Debts and Sums of Money, due to him upon Specialty and without Specialty, and divers Sums due to him for Arrearages of Rent, *&c.* and of and in ſeveral other Goods and Chattels of conſiderable Value, ſufficient to have paid all his Debts, with an Overplus; after whoſe Death *H. G.* the eldeſt Son and Heir of the ſaid *L. G.* entred upon the ſaid real Eſtate of the ſaid *L. G.* of a very conſiderable yearly Value, ſubject to the ſaid Judgment, and he the ſaid *H. G.* either as Executor to his ſaid Father, or as Adminiſtrator to him, poſſeſſed himſelf of all his Father's perſonal Eſtate of the Value of, *&c.* and upwards, and ought to have paid and ſatisfied the Reſidue of the Money due on the ſaid Judgment, and yet hath hitherto neglected to diſcover the ſame, or to ſatisfy your Orator the Money due on the ſaid Judgment; whereupon your Orator cauſed a *Scire facias* or other Proceſs to be ſued out upon the ſaid Judgment, with Intent to extend the ſaid Lands, *&c.* in the ſaid County of, *&c.* *But now ſo it is*, may it pleaſe your Lordſhip, that the ſaid *H. G.* combining and confederating to and with *F. C.* and divers others to your Orator unknown, who when diſcovered your Orator prays may be inſerted in and made Defendants hereto, with apt Words to charge them as Defendants, how to defeat and defraud your Orator of the Money due upon the ſame Judgment, have pleaded in Bar to the Action or Writ

brought upon the ſaid Judgment, that there was ſome Settlement made upon the Marriage of the ſaid *L. G.* or at ſome Time precedent to your Orator's Judgment, and do give out that they will ſet up ſuch Settlement as a Bar to your Orator's Recovery of the ſaid, *&c.* Lands; and the ſaid Confedrates do further give out in Speeches, that the ſaid *H. G.* hath ſince the Death of the ſaid *L. G.* his Father ſold the ſaid Lands to the ſaid *F. C.* for a valuable Conſideration, under the Title of the ſaid pretended Settlement; whereas in Truth if there be any ſuch Settlement as is given out, the ſame is voluntary and fraudulent, and was made after the Marriage of the ſaid *L. G.* without any good and valuable Conſideration, and was all along in the Life-time of the ſaid *L. G.* kept ſecret and private, and the ſaid *L. G.* was looked on to be ſeiſed of the ſaid, *&c.* Lands in Fee-ſimple, and ſo he the ſaid *L. G.* all along affirmed, and the ſame is well known to the ſaid *F. C.* or he was made acquainted before his Purchaſe that the ſaid Settlement was voluntary, and ought not to prejudice the Creditors of the ſaid *L. G.* and the ſaid *F. C.* at or before the Time of his Purchaſe, had Notice of the ſaid Judgment before ſet forth, or at leaſt had ſome Information thereof, or elſe upon Search found there was ſuch a Judgment as aforeſaid, and was apprehenſive thereof, and upon ſome Agreement bebetween him and the ſaid *H. G.* did retain and keep the Sum of 600 *l.* or ſome other large Sum, Part of the Purchaſe-Money, in his Hands, to anſwer ſuch Incumbrances as ſhould happen to

ſtand

ſtand out, whereto the Lands by him purchaſed might be ſubject, and in particular to ſave him harmleſs againſt the before mentioned Judgment, and there is a great Sum of Money, Part of the ſaid Purchaſe-Money, ſtill remaining in the Hands of the ſaid *F. C.* for that Purpoſe; but they the ſaid Confederates refuſe to diſcover the ſame, or the perſonal Eſtate of the ſaid *L. G.* and the ſaid *H. G.* doth alſo refuſe to pay your Orator his ſaid Debt, or to diſcover what Lands or Tenements, *&c.* the ſaid *L. G.* his Father, or any in Truſt for him was or were ſeiſed or poſſeſſed of, and doth refuſe to diſcover who was Executor or Adminiſtrator to his Father; all which Doings of the ſaid *H. G.* and the ſaid other Confederates do tend to your Orator's great Wrong and Prejudice, and are contrary to all Right, Equity and good Conſcience: *In tender Conſideration whereof*, and foraſmuch as your Orator hath no Remedy at Law to diſcover the Truth of the ſaid Settlement, or whether the ſaid *F. C.* had actual Notice of the ſaid Judgment before his pretended Purchaſe, nor to diſcover the real and perſonal Eſtate of the ſaid *L. G.* or wherein it conſiſted, or who was then his Executor or Adminiſtrator, nor who poſſeſſed the ſame, nor how the ſame is diſpoſed, your Orator's Witneſſes to prove the Premiſſes being dead, or in remote Parts, ſo that he knows not where to find them, but in all the ſaid Premiſſes is only and properly relievable before your Lordſhip in this Honourable Court; *And to the End* the ſaid *H. G.* may ſet forth and diſcover the ſaid pretended

Settle-

Settlement, and when, and by whom made, and for what Conſideration, and who were or are Witneſſes thereto, and what Lands, *&c.* are contained in the ſaid Settlement, with their particular Names, Places of Situation, and Boundaries or Abuttals, and whether he doth not know that his Father was all along reputed to be ſeiſed in Fee-ſimple, or ſome other Eſtate of Inheritance of the ſaid, *&c.* Lands and Tenements, and may alſo ſet forth and diſcover whether the ſaid *L. G.* his Father, or any other Perſon or Perſons in Truſt for him, was or were at the Time of his acknowledging or ſuffering the ſaid Judgment to be recovered againſt him, or at any other Time or Times afterwards, ſeiſed of any other Lands, Tenements or Hereditaments, in, *&c.* or in any other County, Town, or Place in *England*, and whether he the ſaid *L. G.* or any other in Truſt for him, was or were poſſeſſed of or intereſted in any, and what Chattel Leaſes in the ſaid County or other Places, and may ſet forth the Particulars and true Values of ſuch Lands, Tenements and Leaſes, and the Name and Names of the Places, *&c.* where the ſame did or do lie, with their particular Deſcriptions and Boundaries, and in whoſe Poſſeſſion or Occupation the ſame was and were; and may alſo diſcover whether he the ſaid *H. G.* or any other by his Privity is or are Executors or Adminiſtrators to the ſaid *L. G.* his Father, and what perſonal Eſtate his Father died poſſeſſed of, or intitled unto, and wherein the ſame did particularly conſiſt, and whether he or any other in Truſt for him have or hath poſſeſſed the

the ſame, or any and what Part thereof, and by and under what Title, Colour or Pretence: And to the End that they the ſaid *H. G.* and *F. C.* may ſet forth and diſcover what Lands, Tenements, *&c.* the ſaid *F. C.* hath at any Time purchaſed ſince the Death of the ſaid *L. G.* whereof and wherein the ſaid *L. G.* was ſeiſed at the Time of entring into the ſaid Judgment, or at any Time during his Life, and may ſet forth the Particulars and Parcels of the ſaid Lands, and where they do lie, and the yearly Value thereof, and whether the ſaid *F. C.* had Notice of the ſaid Judgment at or before the Time of his Purchaſe, and whether there was any of the Purchaſe-Money left in his Hands, or any Security given to ſave him harmleſs againſt the ſaid Judgment, and how much, and what Money and Security: And to the End the ſaid *H. G.* may make a full Diſcovery of all the real Eſtate whereof his Father was ſeiſed at the Time of the ſaid Judgment, and what perſonal Eſtate he died poſſeſſed of, or intereſted in, and that the ſaid Confederates may anſwer all and ſingular the Premiſſes, as if they had been here again particularly interrogated, and your Orator may be relieved in the Premiſſes according to Equity.

May it pleaſe your Lordſhip to grant, &c.

A Bill

A Bill for a Solicitor's Fees and Charges in proſecuting a Chancery Suit.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth, *&c.* Your Orator *A. B.* of, *&c.* Gent. That whereas a Cauſe by *Engliſh* Bill had depended in this Court for ſeven Years and upwards, between *C. D.* Complainant, and *E. F.* Defendant, and the ſaid Cauſe having been ill managed, and for divers Years delay'd, by reaſon of the Negligence and Defaults of ſuch Solicitors or Agents, as on Behalf of the ſaid *C. D.* had ſolicited and managed the ſame, ſo that the ſaid *C.* had little hopes of bringing her ſaid Cauſe to any good Iſſue, ſhe the ſaid *C. D.* knowing the Fidelity and Integrity of your Orator, did thereupon on or about, *&c.* in the Year, *&c.* and at divers other Times, apply her ſelf to your Orator, and earneſtly requeſted and importuned your Orator to undertake the Management and Solicitation of the ſaid Cauſe on her Behalf, and ſhe the ſaid *C. D.* did then, and at divers other Times in the Month, *&c.* promiſe and declare to your Orator, and to divers other Perſons, that if your Orator would undertake to manage, or ſolicit the ſaid Cauſe for her, ſhe the ſaid *C. D.* would not only pay and ſatisfy to your Orator all ſuch Sums of Money as your Orator ſhould lay out, or expend, in and about the Management or Solicitation of the ſaid Cauſe, but would alſo fully pay and ſatisfy to him

him all the Fees, Profits and Perquiſites uſually taken for managing and ſoliciting Cauſes in this Court, and would likewiſe give him a conſiderable Gratuity or Reward over and beſides, if your Orator did effectually manage and ſolicit her ſaid Cauſe: And your Orator further ſheweth, that being prevailed upon by the ſaid Entreaties and Importunities, and truſting to and confiding in ſuch Promiſes and Declarations of the ſaid *C. D.* your Orator did ſometime in the ſaid Month of, *&c.* in the Year aforeſaid, undertake to manage and ſolicit the ſaid Cauſe for her, and your Orator did accordingly manage and ſolicit the ſame for the Space of two Years, then next following, or thereabouts, during which Time your Orator on Behalf of the ſaid *C. D.* applied himſelf to the ſeveral Offices and Officers of this Court, paid the ſeveral Fees of the ſame, and took out and examined Copies of the ſeveral Proceedings had in the ſaid Cauſe, made divers Abſtracts thereof, drew up Breviats and Inſtructions for Counſel thereupon, and retained and inſtructed Counſel therein, and alſo took ſeveral Journeys into the Country, got proper Witneſſes examined, attended the ſeveral Motions and Hearings in the ſaid Cauſe, and got Entries made, and took out Copies of the ſeveral Rules and Orders of Court, and paid all the Fees of the Court, and Counſel, and by his Care, Pains, Diligence, Expences, Skill, and Fidelity therein, effectually ſolicited and managed the ſaid Cauſe: And your Orator farther ſheweth, that by ſuch his Care, Pains, Diligence, Expences, and Fidelity aforeſaid, your Orator

Orator did about two Years afterwards, *viz.* in the Month of, *&c.* now laſt paſt, bring her ſaid Cauſe to a good Iſſue, and determined the ſame much to the Benefit and Advantage of the ſaid *C. D.* and with her then good Liking and Conſent brought the ſaid *E. F.* the Defendant to the following Terms, *viz.* That he the ſaid *E. F.* ſhould then pay to the ſaid *C. D.* the Sum of 150 *l.* in Hand, and the further Sum of 300 *l.* within, *&c.* And that the ſaid *E. F.* ſhould do, *&c.* all which ſaid Terms were punctually performed by the ſaid *E. F.* and the ſeveral Payments made, and being induced or brought to the Performance of the ſame, by the Care, Pains, *&c.* of your Orator as aforeſaid: And your Orator alſo ſheweth, that after the Cauſe had been ſo determined, and all the Matters and Things ſo done and tranſacted by your Orator, the ſaid *C. D.* was ſo far ſatisfied with your Orator's Care and Pains taken in and about the ſame, that ſhe voluntarily promiſed fully to gratify and reward your Orator for the ſame to his Content and Satisfaction, and did declare and promiſe to your Orator that ſhe would give or pay to your Orator the Sum of 50 *l.* for the Pains and Trouble your Orator had been at in ſoliciting the ſaid Cauſe, beſides all the other ordinary and uſual Fees and Perquiſites of a Solicitor in this Court; ſhe the ſaid *C. D.* at the ſame Time, and at divers other Times, owning and declaring to divers Perſons, that if it had not been for your Orator, and his Care in her Affairs, ſhe ſhould never have recovered any Thing from the ſaid *E. F.* and often expreſſed her ſelf to that

Effect;

Effect; and on or about, *&c.* laſt, ſhe paid to your Orator 25 *l.* in part of the ſaid Sum of 50 *l.* ſo promiſed to your Orator as aforeſaid, and alſo the Sum of 10 *l.* 10 *s.* or thereabouts, in part of what was due to him for what he had laid out in Fees and Diſburſements to Counſel, Clerks, and Officers of this Court, in and about the ſaid Cauſe, and at the ſame Time did promiſe and declare to your Orator, and divers others, that ſhe ſhould within, *&c.* pay and ſatisfy to your Orator the Sum of, *&c.* being the Remainder of his Bill, for his Care and Pains in and about the Cauſe aforeſaid, and the remaining 25 *l.* *&c.* And your Orator well hoped that the ſaid *C. D.* would have performed her Promiſes and Declarations, and paid to your Orator the ſaid Sums of, *&c.* within the Time aforeſaid: *But now ſo it is*, may it pleaſe your Lordſhip, that the ſaid *C. D.* intending to defraud and deceive your Orator, doth now altogether refuſe to perform her ſaid Promiſes and Declarations, or to pay and ſatisfy your Orator the ſaid Sum of, *&c.* or 25 *l.* or any Part thereof, and the ſaid *C. D.* combining and confederating with, *&c.* and divers other Perſons unknown to your Orator, whoſe Names when diſcovered, your Orator prays may be inſerted in this Bill of Complaint, with apt Words to charge them, the ſaid Confederates ſometimes pretend that your Orator never managed or ſolicited ſuch Cauſe for the ſaid *C. D.* as aforeſaid, and at other Times give out in Speeches, that your Orator has been already paid and ſatisfied whatever was due to him from the ſaid *C. D.*

the contrary whereof the ſaid *C. D.* and the reſt of the Confederates do well know to be true; And the ſaid *C. D.* doth not only refuſe to pay your Orator what remains due to him as aforeſaid; but alſo the ſaid *C.* unjuſtly deſigning to vex, injure and oppreſs your Orator, did by the Advice of the ſaid Confederates, or ſome or one of them, on or about, *&c.* demand a Bill of Coſts of your Orator, and upon your Orator's delivering ſuch Bill to her, ſhe the ſaid *C. D.* by a Motion made in this Court, got the ſaid Bill referred to Mr. *H.* one of the Maſters of this Court to be taxed, as by an Order of this Court, dated on or about, *&c.* laſt may appear; to which Order of Court your Orator willingly ſubmitted, and then was and ſtill is ready and willing that his ſaid Bill ſhould be taxed, and is alſo ready and willing to allow to the ſaid *C.* on taxing his ſaid Bill, the ſeveral Sums of 25*l.* and 10*l.* 10*s.* as received by your Orator in part thereof; and the ſaid *C. D.* having ſerved your Orator with a Summons to attend the ſaid Maſter, in order to tax your Orator's ſaid Bill, and your Orator attending accordingly, was willing to proceed therein, but the ſaid *C.* thereupon refuſed to proceed in taxing the ſame, contrary to the ſaid Order of this Court made upon her own Motion; and yet nevertheleſs refuſes and denies the Payment of your ſaid Orator's Bill, *&c.* All which Actings and Doings of the ſaid *C. D.* and the reſt of the Confederates, are contrary to Equity and good Conſcience, and tend to the manifeſt Wrong, Injury and Oppreſſion of your Orator: *In Tender Conſideration*

tion whereof, and forasmuch as your Orator is remediless in the Premisses by the strict Rules of Common Law, and is properly and only relievable therein before your Lordship in this Honourable Court, for that your Orator's Witnesses, which could prove the Premisses, are either dead or gone into Places remote and beyond the Seas; *And to the End* that the said *C. D.* and the rest of the Confederates may on their Oaths in this Court, full, true, direct and perfect Answer make to all and singular the Matters and Things herein before charged or contained, as if the same were again particularly repeated and interrogated, and that the said *C. D.* may upon Oath discover, whether she did not on or about, *&c.* in the Year, *&c.* or at what other Time, apply her self to your Orator, and request and importune him to undertake the Solicitation of her said Cause, and what were the Motives of such her Application, and whether she did not at the same Time promise, and to whom, that if your Orator would undertake, *&c.* And that the said *C. D.* may come to an Account with your Orator before the said Master of this Court, and may pay to your Orator what shall appear to be justly due to him, and that in order thereto the said Master may proceed in taxing and settling your Orator's said Bill of Costs, and that your Orator allowing thereupon what he has already received, the said *C. D.* may be ordered by this Honourable Court, to pay to your Orator what remains unpaid of his said Bill, and that your Orator may be relieved in all and singular

the Premiſſes according to Equity and good Conſcience.

May it pleaſe your Lordſhip to grant, &c.

A Bill to be relieved againſt an uſurious Contract, and to vacate the Deeds, grant an Injunction, &c.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth unto your Lordſhip, your daily Orator *W. F.* of, *&c.* Eſq; that his Majeſty that now is, being graciouſly pleas'd of his Bounty and Goodneſs to confer a Favour and Benefit upon your Orator, did by his Letters Patent bearing Date on or about, *&c.* in the Year, *&c.* grant unto your Orator the Mills of, *&c.* with their Appurtenances, and all Rights, Privileges and Advantages thereunto belonging, in the County of, *&c.* to have and to hold to your ſaid Orator, his Heirs and Aſſigns for ever, yielding and paying therefore to his Majeſty, his Heirs and Succeſſors, the Yearly Rent of, *&c.* at the Feaſts, *&c.* by even and equal Portions, as by the ſaid Letters Patent duly inrolled according to Law, may more fully appear; that at the Time of paſſing the ſaid Grant, your Orator lived in the Houſe of one *W. G.* of, *&c.* and was at that Time indebted to him and to his Brother *J. G.* or one of them, in ſome ſmall Sums of Money which he could not then readily pay, and they the ſaid

ſaid *J.* and *W. G.* knowing of the Grant, and deſigning by laying Preſſures and Hardſhips upon your Orator, to compel him to give them an advantagious and unreaſonable Bargain of a Moiety of his Intereſt in the ſaid Mills, which were then really worth to be ſold, ſubject to the ſaid Rent to his Majeſty, at leaſt the Sum of 5000*l.* threatned your Orator immediately to throw him into Priſon for his ſaid Debt; but by a Shew of fair dealing, to induce your Orator to come to an Agreement with them, they promis'd to engage in Partnerſhip in the Management of the ſaid Mills, *&c.* with your Orator, upon the ſame Terms as any other Perſons would do, and particularly upon as good Terms as one Sir *T. B.* had then lately propoſed and offer'd to your Orator, and by the ſaid Threats and Inſinuations your Orator, who expected they would perform what they had promis'd, and act juſtly and fairly according to ſuch Articles as ſhould be made between them and your Orator, your ſaid Orator was prevailed with to come to an Agreement with them, which was, that they the ſaid *J.* and *W. G.* ſhould advance and in Hand pay the Sum of 1500*l.* of lawful Money, *&c.* and pay 750*l.* Part thereof to be immediately apply'd towards a Stock for carrying on, *&c.* and the other 750*l.* was to be paid into your Orator's Hands, upon Security that he would within, *&c.* Years pay the ſame into the Joint Stock to be employ'd with the ſaid other Money in Partnerſhip, *&c.* That your Orator intruſted the ſaid *J.* and *W. G.* to get the ſaid Agreement reduced into Writing, and they the better to de-

ceive your Orator therein, procured one *G. J.* Gent. a Friend of them or one of them, to draw three ſeveral Deeds, one importing an abſolute Conveyance from your Orator, of one Moiety of the ſaid Mills, *&c.* in Conſideration of 1500*l.* whereof 750*l.* was by the ſaid Deed mentioned to be in Hand paid by the ſaid *J.* and *W. G.* to your Orator, tho' in Truth no more thereof than 600*l.* was paid, and yet the ſaid Deed contains an Acknowledgment from your Orator, that the ſaid whole Sum of, *&c.* was paid, and the other 750*l.* was in the ſaid Deed mentioned as 750*l.* which was to be advanced, laid out and employ'd by the ſaid *J.* and *W. G.* in the Joint Trade of, *&c.* agreed upon between your Orator and them by certain Articles, bearing equal Date with the ſaid Deed in ſuch Manner as therein is mentioned; and the ſaid *J.* and *W. G.* cauſed to be prepared one other Deed importing to be Articles of Agreement between your Orator and the ſaid *J.* and *W. G.* for carrying on a Joint Trade of, *&c.* in and by which ſaid Deed or Articles of Partnerſhip the ſaid *J.* and *W. G.* do covenant to advance and deliver in as Stock the ſaid Sum of, *&c.* on or before, *&c.* and by the ſaid Deed your Orator covenants to deliver in as Stock the Sum of, *&c.* within the Space of, *&c.* to be laid out and employed in, *&c.* and it is covenanted that, *&c.* And amongſt many other oppreſſive and unreaſonable Clauſes in the ſaid Articles, it is therein mentioned to be agreed, *&c.* as by the ſaid Articles may appear; and altho' it was the plain Intention of the ſaid Agreement that 1500*l.* ſhould be advanced

vanced and paid by the ſaid *J.* and *W. G.* as the Stock of the ſaid Partnerſhip, your Orator being conſtrained, through the Hardſhips done to and threatned to be put upon him, to accept the ſame in Conſideration of his granting to them one Moiety of the ſaid Mills, which was really and *bona fide* worth, *&c.* yet your Orator having at that Time Occaſion for the Sum of 750*l.* and having propoſed to borrow it out of the ſaid Joint Stock, and to repay it again within the Term of, *&c.* at ſuch Times as the ſame ſhould be wanted, and could be converted to the greateſt Profit, 750*l.* being thought ſufficient to manage the ſaid Partnerſhip for ſome Time, the ſaid *J.* and *W. G.* knowing your Orator's Neceſſity for the ſaid Money, would not let him have the ſame at legal or common Intereſt to be paid to the ſaid Joint Stock, but they by the Advice of the aforeſaid *G. J.* prepared a Third Deed, which was to be a Mortgage of your Orator's other Moiety of the ſaid Mills, *&c.* wherein it is expreſſed that your Orator, in Conſideration of the Sum of 750*l.* in Hand paid to your Orator, and for ſecuring the Repayment thereof into the ſaid Joint Stock, had granted and conveyed to them the ſaid *J.* and *W. G.* your Orator's ſaid other Moiety of the ſaid Mills, *&c.* ſubject nevertheleſs to a Proviſo to this Effect, that if your Orator, his Heirs or Aſſigns ſhould, as ſoon as he or they conveniently could within the Space of, *&c.* from the Date of the ſaid Deed, pay into the Hands of the Caſhier appointed for the ſaid Partnerſhip, the ſaid Sum of 750*l.* and in the mean Time Yearly until

the ſaid Principal Sum ſhould be paid, ſhould pay Intereſt for the ſame to the ſaid *J.* and *W. G.* after the Rate of 10 *l. per Cent. per Annum*, then the ſaid Deed ſhould ceaſe and be void; and your Orator being urged thereto by the Neceſſities aforeſaid, executed all the ſaid three Deeds on or about the Day, *&c.* in the Year, *&c.* on which all the ſaid Deeds bear Date, but for more Certainty as to the Subſtance and Contents of the ſaid Deeds your Orator refers to the ſame when produced; and your Orator farther ſhews, that your Orator having been, by the Means and in Manner aforeſaid, drawn in to admit the ſaid *J.* and *W. G.* into a Moiety of the Profit and Produce of the ſaid Mills, *&c.* for the Conſideration of 1500 *l.* only to be advanced by them, and made a Joint Stock for your Orator and for them, when the Premiſſes ſo granted to your Orator were worth at leaſt, *&c.* Your Orator did not doubt but they would have perform'd what was in their Parts covenanted by the ſaid Articles; but they the ſaid *J.* and *W. G.* inſtead of paying your Orator the ſaid Sum of 750 *l.* paid to your Orator only the Sum of 600 *l.* as aforeſaid; and inſtead of advancing the other Sum of 750 *l.* to be employ'd in the ſaid Partnerſhip on or before, *&c.* they did not pay any Part thereof by the Time appointed, and in the whole they have paid on that Account not above, *&c.* or thereabouts, *&c.* whereby your Orator was diſabled to carry on the ſaid Joint Trade, *&c.* And your Orator further ſhews, that the ſaid *J.* and *W. G.* failing to perform the ſaid Articles by paying to your

Orator the ſeveral Sums of Money ſo agreed to be by them paid as aforeſaid, by which your Orator was greatly damnified, your Orator reſolved to proceed on the ſaid Buſineſs with his own Stock, which he has accordingly done, and to pay to the ſaid *J.* and *W. G.* what Money they had paid to him with the legal Intereſt thereof, which your Orator conceives is the utmoſt they could be intitled unto, they having failed to perform the Terms of their Agreement, which were the only Inducement your Orator had to admit them into the ſaid Partnerſhip, and thereby as your Orator humbly hopes forfeited all their Right they had to the Agreement made with them by your Orator; and your Orator has in a Friendly Manner propoſed to them the ſaid *J.* and *W. G.* that if they would quit Claim to any Benefit by your Orator's ſaid Grant and Conveyance to them, and to the ſaid Partnerſhip, that your Orator, notwithſtanding the ſaid Mortgage was as your Orator is adviſed void, being an uſurious Contract for the Loan of Money at a much greater Intereſt than the Law allows, the Intereſt to be paid by your Orator being 10 *l. per Cent.* whereas the legal Intereſt is only 5 *l. per Cent. per Annum*, would not take the Benefit and Advantage allowed by the Law to your Orator on the ſaid uſurious Contract, but the ſaid *J.* and *W. G.* have refuſed to comply with the ſaid fair and reaſonable Propoſal made to them by your Orator, and they have not only brought an Ejectment againſt your Orator in the Pleas Side of your Majeſty's Court of Exchequer, for the recovering from your Orator the ſaid Mills,

&c. but to oppreſs and utterly ruin your Orator, the ſaid *W. G.* hath exhibited a Bill in the Chancery of, *&c.* againſt your Orator, and thereby inſinuated that the ſaid *J. G.* hath conveyed to him the ſaid *W. G.* all his Right and Intereſt in the ſaid Mills, *&c.* altho' the ſaid *J. G.* hath made him no ſuch Conveyance, and thereby pray'd an Account againſt your Orator for the Profits thereof; and altho' it is expreſly agreed by the ſaid Articles that your Orator ſhould have the ſole Management of the ſaid Mills and Premiſſes, *&c.* yet the ſaid *J.* and *W. G.* in Order to diſable your Orator, have appointed, *&c.* to the great Loſs and Detriment of your Orator; all which Actings and Doings of the ſaid *J.* and *W. G.* are contrary to Juſtice, Equity and good Conſcience; *Now forasmuch as your Orator* is properly relievable in this Court againſt the ſaid injurious Proceedings at Law of the ſaid *J.* and *W. G.* your Orator by the aforeſaid Agreement having a Right to continue in Poſſeſſion and Enjoyment of the ſaid Mills, *&c.* and the rather for that the ſaid *W. G.* hath exhibited ſuch Bill againſt your Orator as aforeſaid; and for that the ſaid unreaſonable and iniquitous Agreement obtained by the ſaid *J.* and *W. G.* from your Orator in Manner aforeſaid, can only be ſet aſide in a Court of Equity for the Unconcionableneſs of it, and for the Non-performance of the ſaid *J.* and *W. G.*'s Part of the ſaid Agreement; *To the End therefore*, that the ſaid Proceedings and all other Proceedings at Law of them the ſaid *J.* and *W. G.* or either of them againſt your Orator on the aforeſaid Deeds,

Deeds, may be ſtay'd by Injunction of this Honourable Court, and that the ſaid fraudulent and oppreſſive Agreement and all Deeds, Articles and Covenants relating thereto, may be ſet aſide, and your Orator be permitted quietly and peaceably to enjoy the ſaid Mills and Premiſſes ſo granted to him by his Majeſty as aforeſaid, upon your Orator's paying to them the ſaid *J.* and *W. G.* all the Money by them or either of them really paid to your Orator and the Intereſt thereof, which your Orator is willing to do, without taking the Benefit of any Statute made againſt the ſaid uſurious Agreement for the ſaid 750*l.* in Caſe the ſaid *J.* and *W. G.* will conſent and agree to vacate and ſet aſide the ſaid Agreement; but otherwiſe your Orator humbly inſiſts on the ſame, and that they the ſaid *J.* and *W. G.* may to their Knowledge, Belief and Hearſay, true, diſtinct and perfect Anſwers make to all and ſingular the Matters and Things aforeſaid, and more particularly may ſet forth and diſcover whether your Orator, at the Time of making the ſaid Agreement, did not lodge in the Houſe of the ſaid *W. G.* and was not your Orator indebted to them or one of them in ſome and what Sum or Sums of Money; was not your Orator then under ſome Difficulties and Preſſures for Want of Money, and did not they or one and which of them threaten to ſue or impriſon your Orator if he would not let them into a Partnerſhip with him; were not the Terms contained in the ſaid Agreement Terms which were inſiſted upon by them or one and which of them; did not they or one and which of them

know that the ſaid Sir *T. B.* had, ſome Time before the ſaid Agreement made with them, offered to give your Orator the Sum of, *&c.* or ſome other, and what Sum, for a Stock for working the ſaid Mills, *&c.* upon Condition of being admitted a Partner in the ſame with your Orator; and did not they or one of them often declare that they were admitted into the ſaid Partnerſhip upon the ſame Terms that Sir *T. B.* was to have been a Partner with your Orator; and are the Terms the ſame, or do they not differ greatly therefrom, and are much leſs beneficial to your Orator; did not they the ſaid *J.* and *W. G.* or one and which of them, direct the drawing of the ſaid Deeds by the ſaid *G. J.* and give Inſtructions for the drawing thereof; are not the ſaid Deeds to the Effect herein before ſet forth, or how do they differ from them; is not your Orator to pay ſuch Intereſt as aforeſaid for the ſaid 750 *l.* ſo agreed to be lent and paid to your Orator, and particularly to pay to the ſaid *J.* and *W. G.* ſeventy-five Pounds *per Annum* Intereſt for the 750. and does not that amount to 10 *l. per Cent. per Annum* for the Intereſt of the ſaid Money lent your Orator, and do the Laws of *England* allow of ſo great Intereſt to be paid for Money; did they or either of them pay your Orator more than 600 *l.* tho' the Deed of Mortgage mentions 750 *l.* as paid to your Orator; did they or either of them pay the 750 *l.* to be employed in the ſaid Partnerſhip on or before, *&c.* what Sum and Sums of Money were at any Time or Times paid by them or either of them to your Orator, or laid out in Stock

Stock or Goods for the ſaid Partnerſhip ſince the Date of the ſaid Articles, and when was each Sum ſo paid or laid out, and in what Goods or Stock were the ſame inveſted, and how and to whom paid; and was not your Orator to have the ſole Management of the ſaid Mills, *&c.* Why then did they interrupt your Orator in the Management of them; is not your Orator by the ſaid Agreement to hold and enjoy the ſaid Mills and Premiſſes according to the ſaid Articles of Partnerſhip, and why then have they or either of them brought an Ejectment to turn your Orator out of them; and that your Orator may be relieved in all and ſingular the Premiſſes as the Merits of his Caſe ſhall require; and the ſaid *J.* and *W. G.* may declare whether they do inſiſt upon the ſaid unequitable Agreement, and the ſaid uſurious Mortgage, or whether they will quit the ſaid Agreement and accept the Money paid by them or either of them to your Orator, and the legal Intereſt thereof; and the ſaid *W.* and *J. G.* may ſet forth what their reſpective Rights and Titles to the ſaid Mills and Premiſſes is, and whether the ſaid *J. G.* did convey his Right and Intereſt therein to the ſaid *W. G.* and when and for what Conſideration, or whether there be any written or other Promiſe or Agreement to defeat the ſame, and what the ſame is and when made; and that the ſaid *G. J.* may ſet forth and diſcover to his Knowledge and Belief whether he drew all or any, and which of the ſaid Deeds, who employed him therein, or gave him Directions or Inſtructions ſo to do, and were ſuch Inſtructions in Writing,

and

and of whoſe Hand-Writing were they, and what are the Subſtance and Contents thereof, and where the ſame now are, and when and where he laſt ſaw them; and that the ſaid Proceedings of the ſaid *J.* and *W. G.* and all Proceedings at Law of them or either of them, on the ſaid Agreement or Deeds or either of them, may be ſtayed till the Hearing of this Cauſe in this Honourable Court; *May it pleaſe your Lordſhip to grant*, (Proceſs pray'd againſt *J.* and *W. G.* and *G. J.* to appear and anſwer,) *&c.* and alſo to grant unto your Orator his Majeſty's Writ of Injunction directed to the ſaid *W. G.* his Counſellors, Attornies, Agents and Solicitors, thereby commanding them and every of them to ſtop and ſurceaſe all Proceedings at Law againſt your Orator until the Hearing of this Cauſe before your Lordſhip in this High and Honourable Court; and that the ſaid *J.* and *W. G.* may ſtand to and abide ſuch Order, Judgment and Decree as your Lordſhip ſhall make for your Orator's Relief, and the Nature and Circumſtances of his Caſe ſhall on the Hearing deſerve and require, *&c.*

Note; Mr. *G. J.* was called upon to maintain the Writings he had drawn in the above Caſe, in or about *Eaſter* Term 1724. And it appearing that the 10*l. per Cent.* Intereſt on the Mortgage, was in lieu of Damages for Want of the Money in the Joint Trade, and that the Principal Money was no Loan, but Money detain'd in the Hands of *W. F.* the Complainant, and for that the ſaid *F.* might have paid it in when ever

ever he would, and thereby have avoided the extraordinary Intereſt; the Deeds were therefore adjudged good and well drawn, and not uſurious, whereupon *J.* and *W.* G. recovered in their Suit.

A Bill to oblige a Partner in a conſiderable Trade and Copartnerſhip, to come to an Account for the Profits with his Fellow Partners.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth, *&c.* your Orator *W.* G. of, *&c.* That in the, *&c.* Year of the Reign of his preſent Majeſty, *W. F.* Eſq; obtained a Grant from his Majeſty by Letters Patent under the Great Seal of *England* to him, his Heirs and Aſſigns for ever of the Mills of, *&c.* with their Appurtenances in, *&c.* at and under the yearly Rent therein mentioned, *&c.* as by the ſaid Letters Patents duly inrolled may appear; and your Orator further ſheweth, That by Indentures of Leaſe and Releaſe duly executed bearing Date, *&c.* in Conſideration of the Sum of 1500 *l.* whereof 750 *l.* was paid by your Orator and his Brother *J.* G. to the ſaid *W. F.* and the other 750 *l.* was to be laid out by your Orator and his ſaid Brother in the Joint Trade of, *&c.* purſuant to certain Articles of Agreement bearing Date, *&c.* the ſaid *W. F.* did aſſign and convey a Moiety of the ſaid Mills, *&c.* with their Appurtenances to your Orator and his ſaid Brother, their Heirs and Aſſigns for ever, as by the ſaid indented Deeds now in your Orator's Cuſtody, and ready

to

to be produced to this Honourable Court, may appear; and your Orator further ſheweth, that the ſaid *W. F.* having agreed by the ſaid Articles or otherwiſe with your Orator and his Brother, to keep back the ſaid Sum of 750 *l.* ſo paid and advanced for the common Uſe and Benefit of the ſaid Trade in Partnerſhip, and having alſo obliged himſelf to pay ſeventy-five Pounds *per Annum*, until he ſhould pay in the ſame, in Order to ſecure the Repayment of the ſaid Sum of 750 *l.* ſo advanced as aforeſaid into the ſaid Joint Trade, and ſeventy-five Pounds *per Ann.* as Intereſt and by Way of Damages until the ſame was paid in according to the Purport of the abovementioned Articles, he by further Indentures of Leaſe and Releaſe bearing Date, *&c.* did aſſign and convey the other Moiety of the ſaid Mills, *&c.* with their Appurtenances to your Orator and his ſaid Brother their Heirs and Aſſigns for ever, ſubject to a Proviſo or Condition, that if the ſaid *W. F.* his Heirs or Aſſigns within the Term of, *&c.* enſuing the Date of the ſaid Indenture, did pay or cauſe to be paid to the Caſhier of the ſaid Partnerſhip, the ſaid Sum of 750 *l.* and Intereſt in the mean Time according to the ſaid Indenture, then the ſaid Conveyance to ceaſe and be void, as by the ſaid Indenture ready to be produced to this Honourable Court may appear; and your Orator further ſheweth, that by certain Articles of Agreement indented bearing Date, *&c.* your Orator, his ſaid Brother *J. G.* and the ſaid *W. F.* enter'd into a Copartnerſhip or Joint Trade of, *&c.* and among ſeveral Articles and Covenants therein contained,

your

your Orator and his ſaid Brother were to have a Moiety of the Benefit ariſing from the ſaid Joint Trade, and your Orator and his ſaid Brother, as often as they or either of them ſhould think fit, are thereby empower'd to appoint one or more Clerks or Agents as Cheques on the Management of the ſaid *W. F.* in the ſaid Joint Trade, and to inſpect the Accounts of all Sums of Money received and paid, and all Goods bought or ſold, *&c.* and each of the ſaid Parties were once in three Months to render to each other a juſt Account of all the Particulars relating to the ſaid Copartnerſhip, *&c.* and your Orator's ſaid Brother was appointed the Banker or Caſhier, to receive and keep the Stock and Caſh for the Management of the ſaid Joint Trade and all the Produce thereof, *&c.* as by the ſaid indented Articles ready to be produc'd to this Honourable Court may more fully appear; and further your Orator ſheweth, that your Orator and his ſaid Brother executed a Bond to the ſaid *W. F.* in the Penalty of, *&c.* for Performance of the Articles aforeſaid; and that your Orator and his ſaid Brother have paid and advanced the Sum of, *&c.* to the ſaid *W. F.* for carrying on the ſaid Joint Trade, as appears by the Accounts of the Payments and Diſburſements which have been made by them, the Particulars whereof are contained in a Schedule annexed to your Orator's Bill, which your Orator humbly prays may be taken as Part thereof; and though your Orator for a valuable Conſideration has purchaſed all the Right, Title and Intereſt of his ſaid Brother in the Premiſſes, as well for the

the Time paſt as to come, and has often writ and ſent in a friendly Manner to the ſaid *W. F.* for an Account of the Profits of the ſaid Mills and other the Premiſſes, which by the ſaid Articles he was obliged to exhibit once in every three Months on Requeſt: *Now ſo it is*, may it pleaſe your Lordſhip, that the ſaid *W. F.* refuſes to account with your Orator for the Profits of the ſaid Mills and Joint Trade, and likewiſe refuſes to let your Orator view any of the Entries in his Books of Accounts, *&c.* and the ſaid *W. F.* having been for ſeveral Months paſt confined in a Gaol, has employed one *T. W.* to look after and receive the Profits of the ſaid Mills, *&c.* who by the Direction of the ſaid *W. F.* refuſed to admit your Orator to view the Books of Accounts, or to give him any Satisfaction relating thereto, and the ſaid *W. F.* ſome Time ſince told, *&c.* that he would not let your Orator into any Share of the Management of the ſaid Mills and Trade, as in Equity and good Conſcience he ought to do, and as by the ſaid Articles of Copartnerſhip he is oblig'd to do; and tho' the ſaid *W. F.* well knows the Truth of all and ſingular the Premiſſes to be as your Orator hath herein before ſet forth the ſame, yet the ſaid *W. F.* combining and confederating with the ſaid *T. W.* and, *&c.* and to and with divers other Perſons unknown to your Orator, whoſe Names when diſcover'd your Orator prays may be made Parties to this Bill with apt Words to charge them, inſiſts and gives out in Speeches that he is off from all Engagements with your Orator, the contrary whereof the ſaid *F.* knows

in

in his Conſcience to be true, and at other Times the ſaid *W. F.* threatens to ſue your Orator on his Bond of, *&c.* conditioned for Performance of Covenants abovementioned, though your Orator has paid and diſburſed the ſeveral conſiderable Sums of Money in the Schedule annexed to this Bill mentioned, and the ſaid *W. F.* well knows that if a fair and juſt Account was ſtated between your Orator and him, he would appear to be very conſiderably indebted to your Orator; all which Actings and Doings of the ſaid *W. F.* and the reſt of the Confederates are contrary to Equity and good Conſcience, and tend to your Orator's utter Ruin, unleſs relieved by your Lordſhip in this Honourable Court, whoſe Buſineſs it is, to ſtate and ſettle Accounts, and to make equitable Allowances, and to compel a ſpecifick Execution of Covenants, to ſtay oppreſſive Suits at Law, and to relieve againſt ſuch Combination and Fraud, *&c.* nor can your Orator diſcover the Truth of the Premiſſes ſave by the corporal Oaths of the Confederates, your Orator's Witneſſes, who could prove the ſame, being diſperſed into remote Parts unknown to your Orator, ſo that your Orator cannot have their Teſtimony at any Trial at common Law for the Premiſſes aforeſaid, but is ſolely and properly relievable by your Lordſhip in a Court of Equity: *To the End therefore*, that the ſaid Confederates, and every of them, may upon each and every of their corporal Oaths to be taken on the *Holy Evangeliſts* true, full, perfect and diſtinct Anſwers make to all and ſingular the Matters aforeſaid, and to every Article, Cir-

cumſtance and Thing in this Bill contained, as well to the reſpective Knowledge of each and every of them, as to each and every of their Hearſay and Belief reſpectively, as fully and perfectly as if the ſame were herein again repeated and interrogated, and particularly that the ſaid *W. F.* may in his Anſwer ſet forth, whether he did not execute a Leaſe and Releaſe, a Deed of Mortgage, and Articles of Copartnerſhip, to and with your Orator and his ſaid Brother to the Effect and Purport as the ſame are herein before ſet forth; did your Orator execute a Bond in the Penalty of, *&c.* to the ſaid *W. F.* and what was the Condition of ſuch Bond; doth the ſaid *W. F.* believe in his Conſcience that the Account annexed by Way of Schedule to this Bill is true and juſt, or with what Variation and Difference, and for what Reaſon; and that the ſaid *J. G.* may ſet forth and diſcover how or in what Manner he has conveyed to your Orator, his Right, Title and Intereſt in the ſaid Mills and Premiſſes, and alſo the Benefit of all his Demands againſt the ſaid *W. F.* on Account thereof; did the ſaid *W. F.* write the ſeveral Letters to your Orator or his ſaid Brother dated, *&c.* and that the ſaid *F.* may view and peruſe the ſame now in the Cuſtody of, *&c.* and endorſe his Name on each before he puts his Anſwer to this Bill, and that the ſaid *W. F.* may in like Manner view the ſaid Deeds of Leaſe and Releaſe, the ſaid Mortgage and Articles of Copartnerſhip, and confeſs if he did not duly execute the ſame, and endorſe his Name on each before he anſwersthis your Orator's Bill; why does

does the ſaid *W. F.* refuſe to produce the Books or Entries of Accounts concerning the joint Trade to your Orator, or to allow Intereſt for the Sum of, *&c.* purſuant to the ſaid Deed of Mortgage; has the ſaid *W. F.* made or cauſed to be made juſt, fair, particular and exact Entries of the Profits of the ſaid Mills, and Premiſſes every Day, or Week, or how often, and for what other Time, and in any or what Books or Papers ſince the Time of the ſaid Copartnerſhip; and that the ſaid *T. W.* may diſcover and ſet forth how long he has been employ'd, and by whom, in the Receipt and Management of the Profits of the ſaid Mills, and how often has he accounted, with any and what Perſon and Perſons, and for how much at each Time particularly, was the ſame a true, juſt and full Account of all the Particulars intruſted to his Care and Conduct; has the ſaid *T. W.* any and what Entries, Books or Vouchers relating thereunto now in his Cuſtody and Power, or what is become of them, or to whom did he deliver the ſame and when; if the ſaid *W. F.* did not order or direct him not to ſuffer your Orator to enter into the ſaid Mills, or view the ſaid Accounts; why does the ſaid *F.* threaten to arreſt and ruin your Orator, by Colour of the ſaid Bond entered into by your Orator, for Performance of the Covenants in the ſaid Indenture of Copartnerſhip, and Deed of Mortgage, when he knows in his Conſcience that your Orator hath performed his Part, and that he the ſaid *F.* is and will be found to be indebted in a very conſiderable Sum to your Orator, when a fair and juſt Account is

ſtated and ſettled between them relating to the Premiſſes; and whether your Orator did not often requeſt the ſaid *W. F.* to come to a fair Account with him, in order to prevent any further Loſs and Trouble, and did not the ſaid *F.* conſtantly refuſe ſo to do; *May it therefore pleaſe your Lordſhip*, that the Proceedings of the ſaid *W. F.* on the ſaid Bond againſt your Orator, may be ſtopped by the Injunction of this Honourable Court, that an Account may be fairly and juſtly taken and ſtated between your Orator and the ſaid *W. F.* in this Court, and that the ſaid *W. F.* and the ſaid *T. W.* may be obliged by the Proceſs of this Honourable Court, to bring in and lodge in this Court all the Books, Papers, Writings and Vouchers relating to the Premiſſes, which ſhall be in their, or either of their Cuſtody or Power, or in the Cuſtody or Power of any Perſon or Perſons in Truſt for them, or either of them, and that your Orator may be relieved in all and ſingular the Premiſſes, according to Equity and good Conſcience, *&c.*

A croſs Bill where a Perſon is ſued to Account, exhibited by the Defendant againſt the Complainants, to produce Papers, and diſcover who hath acted in an Executorſhip.

To the Right Honourable, *&c.*

HUmbly, *&c.* ſheweth, *&c.* your Orator *A. B.* of, *&c.* that *C. D.* late of, *&c.* was in his Life-time ſeiſed and poſſeſſed of a very great Eſtate, both real and perſonal, to the

the Value of, *&c.* and being ſo ſeiſed and poſſeſſed, did about the Day in the Year, *&c.* make his Laſt Will and Teſtament in Writing, and thereby deviſe and bequeath unto three of his Children, *viz. P. D. J. D.* and *T. D.* ſeveral Legacies and Bequeſts, and alſo to his Daughter *E. D.* the Sum of, *&c.* and did alſo by the ſaid Will appoint, that whereas he was poſſeſſed of ſeveral Houſes in, *&c.* Street *London*, by Leaſe, which were burnt down in the dreadful Fire which happened, *&c.* That his Executors therein after named ſhould rebuild the ſame, and the Profits thereby afterwards ariſing to be equally divided to and amongſt his ſaid three Children, and the Survivors of them, Share and Share alike; and did further direct, that whereas he had 1000*l.* in the *Eaſt-India* Company, that the ſame ſhould not be taken out by his Executors for ſeven Years after his Deceaſe; and in and by the ſaid Will he did deſire, that his Executors ſhould twice yearly meet his Overſeers in the ſaid Will named, and make, give up and perfect a plain and full Account in Writing unto and with the ſaid Overſeers, of, for and concerning all Monies, Debts, Payments, Receipts, Diſburſements, and other Things touching his ſaid Eſtate, or any way concerning or relating to the Execution of his Will, and that a Copy of every ſuch Account ſhould be fairly writ and ſubſcribed by his Executors and delivered to his Overſeers, to the End that all other Perſons, to whom his Executors ought or ſhould be liable to render and give any Account, might receive and have a plenary

Satisfaction of his ſaid Executors Proceedings in and about the Performance of his Will, not doubting of their Care and Fidelity therein; and the ſaid *C. D.* in and by the ſaid Will did order and appoint, and it was his Will, that his Executors therein named ſhould with the Advice and Approbation of his Overſeers, or the Survivor or Survivors of them, lend to ſome good Company, Guild or Fraternity in *London*, or lay out in buying of Leaſes for Years, or upon Mortgages, or to able Perſons upon Bond, his ſaid Children's Portions for the Bettering of the ſame, and maintaining and educating his ſaid Children, wherein he deſired their utmoſt Care, and that in the ordering and diſpoſing of his ſaid Children's Portions as aforeſaid, if any Loſs ſhould happen to the ſame, ſuch Loſs ſhould be born by his Children, and no Part by his Executors; and of his ſaid Will the ſaid *C. D.* did make your Orator and one *E. F.* of, *&c.* and his Son *P. D.* Executors, and *G. H. J. K.* and *L. M.* Overſeers, as by the ſaid laſt Will of the ſaid *C. D.* had your Orator the ſame to produce, more fully would appear; and afterwards about, *&c.* the ſaid *C. D.* died poſſeſſed of a great perſonal Eſtate, conſiſting in ready Money, and Monies out upon Securities; And your Orator further ſheweth unto your Lordſhip, that afterwards your Orator and the ſaid *E. F.* and *P. D.* proved the ſaid Will, but your Orator never poſſeſſed himſelf of any of the perſonal Eſtate of the ſaid *C. D.* other than the Leaſe of the Houſes in, *&c.* Street, which he rebuilt, and received the Rents, Iſſues and Profits of the ſame,

ſame, great Part of which he expended in maintaining and educating the Children of the ſaid Teſtator, and other Part thereof in building and repairing the ſaid Houſes, and other Monies he paid to the ſaid *P. D.* to be employed, *&c.* And your Orator did not any further Act in the ſaid Executorſhip than as aforeſaid. And your Orator further ſheweth unto your Lordſhip, that the ſaid *P. D.* at his ſaid Father's Death being about eighteen Years old, and of ſufficient Diſcretion to manage the ſaid Eſtate, your Orator with the ſaid other Executor *E. F.* was Content, and were both very willing that the ſaid *P. D.* ſhould be the principal acting Executor of the ſaid Will, to the Intent he might be the better inſtructed in the Management of the ſaid Eſtate, and make the beſt Improvement thereof, for the Benefit of himſelf and his other Brothers and Siſters, which ſo nearly concerned him; and this they did the rather, for that they looked on the ſaid *P.* to be very careful and truſty, and it might be as well an Eaſe to them, as alſo a good Employment for the ſaid *P. D.* who had little or no other Employment of his Time; and beſides your Orator being very aged and infirm, was unable to meddle in the ſaid Executorſhip, nor did he meddle therein otherwiſe than as aforeſaid, by Means whereof the ſaid *P. D.* did altogether act in the ſaid Executorſhip, by receiving and paying all Sums of Money that any ways concerned or related to the ſaid Executorſhip, ſave only as to the ſaid Houſes in, *&c.* which by reaſon of the Nearneſs thereof to your Orator's Habitation, who then

lived and ſtill lives in one of them, he was willing to undertake the Management of them as aforeſaid; And your Orator further ſheweth unto your Lordſhip, that according to the Directions of the ſaid Will, he did ſeveral Times make up his Accounts in Writing, and deliver them to the Overſeers of the ſaid Will, all which Accounts ſo delivered in by your Orator as aforeſaid were true and juſt Accounts of all the Actings and Dealings, and of all the Receipts and Payments about or in Relation to the perſonal and other Eſtate of the ſaid *C. D.* as by the ſaid Accounts, had your Orator the ſame to produce, more fully would appear; and which Accounts are in the Hands of the ſaid *G. H.* the ſurviving Overſeer of the ſaid Will, the other two being ſince dead, or in the Hands of ſome other in Truſt for him, and where he may have Acceſs to the ſame; and your Orator can give no other Account of thoſe Sums, or the ſame again, unleſs he had thoſe Accounts, or true Copies thereof; and your Orator ſheweth, that the ſaid *P. D.* about, *&c.* made his Laſt Will and Teſtament in Writing, and thereby did Deviſe, *&c.* and did alſo give and bequeath to, *&c.* and of the ſaid Will made your Orator, the ſaid *E. F.* and, *&c.* Executors, and ſoon after died poſſeſſed of a very conſiderable Eſtate both Real and Perſonal, as in and by the ſaid Will, had your Orator the ſame to produce, more at large appeareth; and after the ſaid *P. D.*'s Death your Orator joined with the ſaid *E. F.* and, *&c.* in the Probate of the ſaid Will in the Prerogative Court, but never intermedled more with the

the ſaid Executorſhip, or with the Eſtate of the ſaid *P. D.* but the ſame hath been wholly managed by the ſaid *E. F.* who hath ever ſince the Death of the ſaid *P.* received and paid all Sums, and done all other Acts relating to the ſaid *P. D.*'s Eſtate, and likewiſe to the ſaid *C. D.*'s Eſtate, whereby he hath gotten into his Hands large Sums of Money, and other Goods and Chattels of a great Value: *But now ſo it is*, may it pleaſe your Lordſhip, that the ſaid *E. F.* and, *&c.* combining with, *&c.* and having by cunning Inſinuations made the ſaid, *&c.* believe that great Part of the Eſtate of *C. D.* and *P. D.* is in the Hands of your Orator, altho' they well know the contrary, and that upon a fair Account the ſaid Eſtates will be much indebted to your Orator, beſides ſeveral Sums not mentioned in ſuch Accounts lent by your Orator unto the ſaid *P. D.* which your Orator hopes he may retain in his Hands, or be reimburſed the ſame by the ſaid *E. F.* who hath got all the Eſtate of the ſaid *P.* in his Hands, they the ſaid *E. F.* and, *&c.* have either cauſed or procured the ſaid, *&c.* to exhibit a Bill in this Honourable Court againſt your Orator to call him to an Account for his Tranſactions in the ſaid Eſtate, thereby intending to charge your Orator with the whole Eſtates of the ſaid *C. D.* and *P. D.* tho' they well know, and ſo the Truth is, that your Orator never intermedled with any Part thereof, ſave only the ſaid Eſtate in, *&c.* and the better to colour their Pretences, have likewiſe conſented and procured themſelves to be made Parties to the ſaid Suit, and that there may

may be little or no Proſecution at all againſt them the ſaid, *&c.* therein, or if any, the ſame is only for Form's Sake, and the Charges thereof to be laid upon the ſaid *E. F.* and, *&c.* And the ſame Suit was wholly proſecuted by the Contrivance of the ſaid *E. F. &c.* or one of them, on Purpoſe to take off the Burthen that lay upon them to account for their Tranſactions in the ſaid ſeveral Eſtates, by charging your Orator, notwithſtanding the ſaid *P. D.* was the only acting Executor, and the only Perſon that uſed to receive and pay any Money, or act any other Buſineſs concerning the ſaid Eſtate of his Father *C. D.* and that the ſaid *E. F.* hath been the like acting Executor in the Eſtate of the ſaid *P. D.* who as Executor is chargeable with the Acts and Defaults of *P.* in and about the Management of his Father's Eſtate; and your Orator abating the Receipt of the, *&c.* Rents, never acting in the Management of either of the ſaid Eſtates, unleſs it were by implicit Conſent to confirm the Actions of the ſaid *P. D.* And alſo by the ſaid Bill they deſign to charge your Orator ſolely for all the Joint Actions of the ſaid *P. D.* and *E. F.* with your Orator, touching the ſaid *C. D.* his Eſtate, who if any Joint Neglect were, ought to be equally contributary to the ſame; and likewiſe by the ſaid Bill they charge your Orator to give an Account of all the Receipts and Diſburſements by him in the ſaid Eſtates, for which he accounted to the ſaid Overſeers, well knowing that he cannot poſſibly make an Account of ſuch his Receipts and Diſburſements, without Sight of ſuch his former Papers of Accounts,

counts, or true Copies thereof, in Regard he hath no Copies of his own as aforeſaid; and the ſaid Accounts by the Combinations aforeſaid are detained and concealed from your Orator, who hath no Means to diſcover the ſaid Accounts, or to have Copies thereof, or to defend himſelf againſt the ſaid unjuſt Proceedings of the ſaid Confederates, or to be relieved in the Premiſſes, but by the Aid and Aſſiſtance of this Honourable Court; *To the End therefore* that your Orator may be the better enabled to make ſuch Accounts as ſhall be required from your Orator, he humbly prays that the ſaid Confederates may ſet forth the ſaid Accounts ſo delivered in by your Orator as aforeſaid unto the Overſeers, and that ſuch of them as ſhall be diſcovered to have the ſame, or in the Cuſtody of any other to their or any of their Uſe, may upon Oath deliver to your Orator true and authentick Copies thereof; and alſo that they the ſaid Confederates may ſeverally ſet forth whether the ſaid *P. D.* was not the chief acting Executor of the ſaid Teſtator *C. D.* and whether your Orator, to their or any of their Knowledge, ever acted any Thing touching the ſaid Eſtate, without the Preſence or Conſent of the ſaid *P. D.* ſave only about the Eſtate in, *&c.* and whether ſuch Actings of your Orator with the ſaid *P. D.* were not only to confirm the Acts of the ſaid *P.* and if otherwiſe, that then the ſaid Confederates may particularize, ſo that your Orator may not be chargeable with other Men's Actions; and that they the ſaid Confederates may alſo ſet forth whether the ſaid *E. F.* hath not been the only Perſon

that

that hath managed the ſaid *P. D.*'s Eſtate as Executor, or who hath been ſo, or whether your Orator hath any ways intermedled therein, otherwiſe than by joining in the Probate of the Will of the ſaid *P. D.* with them the ſaid, *&c.* and alſo that all the Confederates may true Anſwer make to all and ſingular the Premiſſes, and your Orator be relieved according to Equity and good Conſcience.

May it pleaſe your Lordſhip to grant, &c.

A Bill for a Tenant to be indemnified in paying his Rent, where two Perſons claim Title to the Premiſſes let.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth, *&c.* your Orator *A. B.* of, *&c.* That whereas one *C. D.* pretending himſelf to be lawfully poſſeſſed of, and entitled unto, a certain Meſſuage or Tenement in, *&c.* for the Reſidue of a Term of Years, of which Term divers Years are yet to come, did about three Years ſince offer to let the ſame to your Orator, and your Orator did agree to become Tenant for the ſame for one Year, at the yearly Rent of, *&c.* and your Orator did continue to hold the ſaid Premiſſes as Tenant at Will, at and under the ſaid Rent, until, *&c.* which was in the Year of our Lord, *&c.* and did pay divers Sums of Money to the ſaid *C. D.* towards Satisfaction of the ſaid Rent; And your Orator further ſheweth, that about, *&c.* the ſaid *C. D.* and your Orator came to an Account, touching all Rent due and in arrear from

from your Orator, for the ſaid Premiſſes, at and before, *&c.* and your Orator did ſatisfy and pay the ſame to the ſaid *C. D.* And further your Orator ſheweth, that the ſaid *C. D.* at the Time he the ſaid *C. D.* and your Orator ſo occounted together as aforeſaid, did acquaint your Orator that he had formerly mortgaged the ſaid Premiſſes to one *E. D.* Deceaſed who was his Brother, for the Sum of, *&c.* and that the ſaid *E. D.* had by his Will deviſed his Intereſt in the ſaid Premiſſes, by Virtue of ſuch Mortgage to *F. G.* of, *&c.* and that he the ſaid *C. D.* muſt part with the ſaid Premiſſes, or pay the ſaid *F. G.* the ſaid, *&c.* which he did not intend to pay, it being much more than the Premiſſes are worth, and therefore he told your Orator he muſt for the future pay his Rent to the ſaid *F. G.* or to ſuch or the like Effect: And the ſaid *F. G.* ſhortly after demanding Poſſeſſion of the ſaid Premiſſes, your Orator, as he was adviſed he lawfully might, and ought to do, did attorn and agree to become Tenant for the ſaid Premiſſes to the ſaid *F. G.* for one Year ending at, *&c.* laſt paſt, at and under the ſaid Rent of, *&c. per Annum*, and your Orator refuſing to hold the ſaid Premiſſes any longer at that Rent, the ſaid *F. G.* did agree that your Orator ſhould hold the ſame this preſent Year at the Rent of, *&c.* And your Orator well hoped that upon Payment of his ſaid Rent he ſhould have quietly enjoyed the Premiſſes, without any farther Trouble: *But now ſo it is*, may it pleaſe your Lordſhip, the ſaid *C. G. F. D.* and one *A. D.* who as is pretended is Executrix of the

the Laſt Will and Teſtament of the ſaid *E. D.* combining and confederating together with Intent to oppreſs your Orator, and compel your Orator to pay his Rent twice, the ſaid *C. D.* doth now pretend and give out, that the ſaid Mortgage-Money with Intereſt, was paid or ſatisfied to the ſaid *E. D.* in his Life-time, and that the Deed or Deeds whereby the ſame was ſecured, was, were or ought to have been delivered up to be cancelled, and hath lately cauſed your Orator to be arreſted in an Action at Law, for the Rent due for the ſaid Premiſſes at, *&c.* and held your Orator to Bail, and pretends the ſaid Rent doth wholly belong to him and the ſaid *A. D.* &c. at the ſame Time the ſaid *F. G.* doth pretend the ſaid Rent belongs to him by Virtue of the ſaid Mortgage and of the Will of the ſaid *E. D.* and threatens likewiſe to ſue your Orator for the ſame; *In tender Conſideration whereof*, and foraſmuch as your Orator cannot tell to which of them the ſaid *C. D. A. D.* and *F. G.* he ought or may ſafely pay his ſaid Rent, but is in Danger of being doubly charged for the ſame, unleſs he is relieved therein by this Honourable Court; *To the End therefore*, the ſaid *C. D. A. D.* and *F. G.* may anſwer all and ſingular the Premiſſes, and ſet forth and diſcover what Right or Title they reſpectively have or claim to the ſaid Meſſuage or Tenement and Premiſſes, and to the Rent due from your Orator for the ſame, and may interplead touching the ſaid Rent, and that your Orator may, upon Payment of his ſaid Rent, deducting what your Orator hath paid thereout for Taxes and other Rates and

Payments charged thereupon, to ſuch of them to whom the ſame ſhall appear of Right to belong, be indemnified and ſaved harmleſs by the Decree of this Honourable Court, and be fully relieved in all and ſingular the Premiſſes, according to Equity and good Conſcience, and that all Proceedings at Law againſt your Orator for the ſaid Rent may be in the mean Time ſtay'd.

May it pleaſe your Lordſhip to grant, &c.

A Bill of Enterpleader, on two Suits being commenced againſt the Complainant by two ſeveral Perſons for the ſame Thing.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth unto your Lordſhip, your Orator Sir *E. D.* of, *&c.* Knight, That the Manor of, *&c.* and divers Lands, Tenements and Hereditaments, late the Eſtate of the Right Honourable *J.* Earl of *S.* deceaſed, being by Act of Parliament veſted in Truſtees for Sale and Diſpoſal of the ſame, your Orator did contract and agree for the Purchaſe of the ſame, for the Sum of 17500 *l.* of which ſaid Sum there was appointed to be paid, in Purſuance of the ſaid Act, by the Truſtees therein named, unto *J.* Lord *S.* deceaſed the Sum of, *&c.* and your Orator further ſheweth, that the Truſtees, and all other Perſons concerned in the ſaid Manor and Premiſſes, and particularly the ſaid Lord *S.* did, by good Conveyances in the Law, convey the ſaid Premiſſes to your Orator and his Heirs; and the ſaid Lord *S.* having, as your Orator was informed by one *C. S.* of, *&c.* Goldſmith, appointed

ed the ſaid, *&c.* to be paid unto him the ſaid *C. S.* your Orator did appoint the ſaid *C. S.* to meet at, *&c.* Houſe, to receive his Money at a Time when your Orator was to pay the other Perſons the Money payable to them; and the ſaid *C. S.* did then attend, but ſome of the other Perſons not attending at the ſame Time, the Payment of the Money was deferred to a further Time; and afterwards the Lord *S.* and *E. S.* and *J. F.* two of the Truſtees did forbid your ſaid Orator's Paying the ſaid Money to the ſaid *C. S.* notwithſtanding the Order of the ſaid Lord *S.* to pay the ſaid Money to him the ſaid *C. S.* as he informed your Orator; and ſoon after the ſaid Lord *S.* died, the ſaid Money remaining unpaid; and your Orator further ſheweth, that after the Death of the ſaid Lord *S.* the Lady *M.* his Widow, did take out Letters of Adminiſtration of all and ſingular the Goods, Chattels and Credits of the ſaid Lord *S.* and demands the Money of your Orator, as alſo doth the ſaid *C. S. And now ſo it is*, may it pleaſe your Lordſhip, that the Lady *M. S.* combining with the ſaid *C. S.* and, *&c.* or ſome of them, and with Sir *W. B. S. P.* Eſq; and *J.* now Earl of *S.* did on or about, *&c.* laſt exhibit her Bill in this Honourable Court againſt your Orator, and the ſaid *C. S.* and others, to compel your Orator to pay the ſaid, *&c.* unto her the ſaid Lady *S.* and the ſaid *C. S.* hath alſo exhibited his Bill in this Court againſt your Orator and the ſaid Lady *S.* to compel your Orator to pay the ſaid, *&c.* to the ſaid *C. S.* and not the Lady *S.* he the ſaid *C. S.* pretending that the ſaid Lord *S.* before his

Death, did, by his Deed or Writing under his Hand and Seal, aſſign and transfer the ſaid Money unto him the ſaid *C. S.* for a valuable Conſideration in Money paid by the ſaid *C. S.* to the ſaid Lord *S.* in his Life-Time; and the ſaid *M.* Lady *S.* by her Bill pretends, that the Lord *S.* did, upon or before his Marriage with her, make and execute an Agreement in Writing, whereby the ſaid Sum of, *&c.* with other Money, were to be laid out in Lands to be ſettled on her, which was never done; and by reaſon of ſuch and the like Pretences of the ſaid ſeveral Perſons aforeſaid, your Orator hath been conſtrained to keep the ſaid Money dead at a great Hazard, and cannot diſpoſe of the ſame, or be diſcharged thereof, 'till the Pretenſions of each Party to the ſame are determined, who likewiſe inſiſt that your Orator ſhall pay Intereſt for the ſaid Money in the mean Time, and make no Speed to the Hearing of the Cauſes, but delay the ſame on Purpoſe to charge your Orator with Intereſt thereof; and albeit your Orator hath put in his Anſwer to both the ſaid Bills, and offered to pay the ſaid Money into Court, yet the Confederates do oppoſe the ſame, pretending that your Orator ought to have brought his Bill of Enterpleader, whereby your Orator is neceſſitated to bring this Bill, and by which he hath been put to great Charges, whereof he prays the Conſideration of this Court: *In tender Conſideration whereof*, and foraſmuch as your Orator hath no way to be relieved in the Premiſſes, and to be diſcharged of the ſaid Money but by the Aid and Aſſiſtance of this Honourable

Court; *To the End therefore* that the ſaid Confederates may anſwer the Premiſſes, and that the ſaid Lady *S.* and *C. S.* may interplead with each other touching the ſaid Sum of, *&c.* and proceed with Effect to a Determination of their reſpective Rights and Properties in the ſaid Sum, and that your Orator may bring the ſame into this Honourable Court, and may thereupon or otherwiſe be diſcharged of the ſame, and may be indemnified againſt all Claims and Pretences of the ſaid Lady *S.* and *C. S.* and either of them touching the ſaid Money; and your Orator on Conſideration of the whole Matter, may have ſuch Relief in the Premiſſes as ſhall be agreeable to Equity and good Conſcience; *May it pleaſe your Lordſhip to grant* unto your Orator not only your Lordſhip's Letter to be directed to the ſaid *M.* Lady *S.* and *J.* Earl of *S.* deſiring them to appear before your Lordſhip in this Honourable Court to anſwer the Premiſſes, but alſo his Majeſty's moſt gratious Writ or Writs of *Subpœna* to be directed to the ſaid Sir *W. B. S. P. E. S. J. F.* and *C. S.* thereby commanding them at a certain Day, and under a certain Pain therein to be limited, perſonally to be and appear, *&c.*

The uſual Affidavit *at the Bottom of the Bill.*

'THE Plaintiff Sir *E. D.* maketh Oath, 'that this Bill is exhibited by him voluntarily, on his own Account, and at his own 'Coſts, and not at the Deſire or by the Perſuaſion, or at the Coſts of any of the Parties Defendants to the ſame.

A Bill to recover Part of a Manor and Tithes, &c. and examine Witneſſes in perpetuam rei Memoriam to prove the Boundaries of the ſaid Manor.

To the Right Honourable, *&c.*

HUmbly complaining ſheweth, *&c.* your Orator and Oratrix *W. B.* of, *&c.* and *M.* his Wife, who was the only Daughter and Heir of *J. W.* of, *&c.* deceaſed, that the ſaid *J. W.* in his Life-Time, and at the Time of his Death, was ſeiſed in Demeſne as of Fee of and in the Manor of, *&c.* with all and ſingular the Lands, Tenements, Rents, Reverſions, and Hereditaments thereunto belonging, with their and every of their Appurtenances, and was alſo ſeiſed in Fee-ſimple of and in the Rectory of the Pariſh Church of, *&c.* to which the Tithes of all Kinds growing and ariſing out of and within, *&c.* did and ſtill do belong; and the ſaid *J. W.* being ſo ſeiſed about, *&c.* in the Year, *&c.* died ſeiſed thereof, upon whoſe Deceaſe the ſaid Manor and Rectory did deſcend to your Oratrix *M.* his only Daughter and Heir; and your Orator and Oratrix further ſhew unto your Lordſhip, that by ſeveral antient Surveys, Terriars, Rentals, and other Evidences belonging to the ſaid Manor and Rectory, it manifeſtly appears the ſaid Manor, and Rectory and Tithes, did and ſtill do conſiſt of the ſeveral Lands, Tenements and Hereditaments herein after particularly ſet forth, and formerly ſo called, bounded and de-

ſcribed as they are hereafter mentioned, (*viz.*) one Meſſuage called, *&c.* and alſo, *&c.* and, *&c.* ſo that your Orator and Oratrix ought in all Equity and good Conſcience quietly to enjoy the ſaid Manor ſo deſcribed, and alſo to have and receive as well the ſaid Freehold Rents, as the Rents of the ſaid Leaſehold Lands, and all Tithes yearly ariſing, growing and renewing upon the ſaid Lands mentioned to belong to your Orator and Oratrix's ſaid Rectory, and well hoped to have enjoyed the ſame accordingly: *But now ſo it is*, may it pleaſe your Lordſhip, one *T. C.* Eſq; being Lord of the Manor of, *&c.* which lies contiguous and intermixed with your Orator and Oratrix's ſaid Manor, and one *J. C.* the Rector of the Pariſh of, *&c.* to whom Part of the Tithes of the ſaid Pariſh do of Right belong, taking the Advantage of your Orator and Oratrix's being Strangers to their ſaid Manor, and of their living a great Diſtance from the ſame, they the ſaid *T. C.* and *J. C.* have entered into a Combination and Confederacy with *J. T. E. J. W. E. T. H. &c.* your Orator and Oratrix's Tenants of the ſaid Manor, who are likewiſe moſt of them Tenants to the ſaid *T. C.* thereby to defeat and defraud your Orator and Oratrix, as well of the greater Part of the Lands belonging to the ſaid Manor, as alſo of the ſaid Tithes belonging to the ſaid Rectory; and for that Purpoſe the ſaid Confederates prevailed with the ſaid Tenants who held Lands of your Orator and Oratrix adjoining to the Lands of the ſaid *T. C.* to whom alſo they were Tenants, to pull down and deſtroy the antient Bounds and Fences.

ces which ſevered the ſaid Grounds and Cloſes, and would have extinguiſhed the ſame upon Pretence that it is moſt convenient and leſs Charge to them, by Reaſon of the Unity of Poſſeſſion under the ſeveral long Leaſes both from your Orator and Oratrix and the ſaid *T. C.* by which they have enjoyed the ſame; and alſo have prevailed with the ſaid Freehold Tenants, who ought to have paid your Orator and Oratrix their ſeveral Rents reſerved, to detain their ſaid Rents, pretending the ſaid Lands were held of his the ſaid *T. C.*'s Manor, and knowing that your Orator and Oratrix cannot recover the ſame by Law for want of Seiſin of the ſaid Lands, ſo that it is already very difficult, and will be in Time impoſſible for your Orator and Oratrix who are Strangers to the Premiſſes, to diſcover the antient Boundaries of the ſaid Manor, and the ſaid Rents due from the ſaid Freehold Lands, and Tithable Places, unto which your Orator and Oratrix's ſaid Rectory doth extend, eſpecially as your Orator and Oratrix's Witneſſes who ſhould and could prove the ſame, are very aged and infirm, and not likely to be had at any Trial at Law, when the ſaid Leaſes ſhould be determined: *In tender Conſideration whereof*, and the rather for that the Confederates already pretend and ſet up a Claim to the whole Tithes of the ſaid Pariſh of, *&c.* and have actually forbid the ſeveral Occupiers of the Lands within the ſame to pay your Orator and Oratrix any more Tithes as belonging to their ſaid Rectory, which accordingly they forbear to do; *To the End therefore*, that the ſaid Confe-

derates may true and perfect Anſwer make to all and ſingular the Premiſſes, and may particularly ſet forth the antient Bounds of your Orator and Oratrix's ſaid Manor and Titheable Places belonging to their ſaid Rectory, and when and how the ſame have been altered and changed, and by whom the ſame have been ſo done, and whether the ſeveral Parcels thereof herein before mentioned were not formerly abutted and bounded as aforeſaid; and that the ſaid Confederates *T. C.* and *J. C.* may be compelled to pay your Orator and Oratrix the Arrears of the aforeſaid Rents, and to come to a fair Account for the ſame; and that your Orator and Oratrix may have Liberty to examine their Witneſſes to prove the Boundaries of the ſaid Premiſſes, and perpetuate their Teſtimony; and that your Orator and Oratrix may have ſpeedy and effectual Remedy and Relief in the Premiſſes.

May it pleaſe your Lordſhip to grant, &c.

A Bill to enlarge a Pariſh Church, and apply Money for that Purpoſe, and alſo to Charitable Uſes, &c.

To the Right Honourable, *&c.*

SHeweth, *&c.* your Orators *A. B.* and *C. D.* Church-wardens of the Pariſh of, *&c.* and *E. F. G. H. J. K. L. M. &c.* principal Pariſhioners and Veſtry-men of the ſaid Pariſh, for and on Behalf of themſelves and other the Pariſhioners and Inhabitants of the ſame Pariſh, that whereas

whereas the Number of the Pariſhioners and Inhabitants within the ſaid Pariſh, have of late Years been very much encreaſed, and are continually encreaſing, by reaſon of the great Concourſe of Perſons from *London* and other Places reſorting to and reſiding in the ſaid Pariſh, ſo that the Church belonging to the ſaid Pariſh is at Preſent, on Account of its Smallneſs and irregular Structure no Way capable of receiving or containing ſuch Pariſhioners and Inhabitants as on Sundays and other Holidays reſort to the ſaid Church, whereby many of them are deprived of the Benefit of joining in the Publick Prayers, and hearing the Word of God Preached within the ſaid Church; and whereas divers publick Veſtries and other general Meetings and Aſſemblies of the ſaid Pariſhioners and Inhabitants have been called and held, wherein divers Methods and Expedients have been propoſed and conſidered of in Order to remedy and rectify the ſaid Inconveniencies, at which publick Veſtries it has been generally and unanimouſly agreed on and reſolved, that the only proper and effectual Method to remedy the ſame, will be by altering and enlarging ſome Part of the preſent Structure of the ſaid Church, that is to ſay, by pulling down, *&c.* and by erecting a new additional Building to the ſaid Church, extending in Length *&c.* And whereas ſuch Enlarging and Augmentation of the ſaid Church would not only be an Ornament thereto, and conduce to the Advancement of Religious Worſhip as aforeſaid, but alſo it would be a good Expedient for making a better Proviſion for the Maintenance and Support of

the Poor of the ſaid Pariſh, by applying the Fees and Profits of Burials in the ſaid Church, and of the Seats in ſuch additional Building, towards their Maintenance; therefore it was at ſuch publick Veſtries alſo agreed and reſolved, that ſuch Fees and Profits ſhould be accordingly apply'd for and towards, *&c.* And whereas at ſuch Veſtries it appeared that the Charge of erecting ſuch new Building, and finiſhing and adorning the ſame with Seats, *&c.* would amount to, *&c.* and there being formerly depoſited and now remaining in the Hands of *N. P.* of, *&c.* the Sum of 300 *l.* upon his Bond given to the ſaid Church-wardens, the ſame being the publick Money of the ſaid Pariſh, and given to the Poor thereof by the Will of, *&c.* and thereby directed to be put in the Hands of the ſaid *N. P.* and he to pay Intereſt, *&c.* And it appearing to the ſaid publick Veſtries and Aſſemblies of the ſaid Pariſhioners, that the Profits and Perquiſites that would ariſe by letting the Pews and Seats in ſuch additional Buildings to the ſaid Church, and from the Fees for Burials, *&c.* would yearly amount to a much greater Sum than the Intereſt of the ſaid 300 *l.* ſo depoſited in the Hands of the ſaid *N. P.* It was alſo unanimouſly agreed and reſolved on by the ſaid Veſtry, *&c.* that the ſaid 300 *l.* ſhould be applied towards the erecting ſuch Building, and that the Pariſhioners and Inhabitants would advance and make good the Reſidue of the Charges and Expences thereof over and above the ſaid 300 *l.* by voluntary Payments and Contributions; and that after the ſaid Building ſhould be finiſhed, all the Fees, Profits

fits and Perquiſites ariſing or accruing by letting, ſelling or diſpoſing of the Pews and Seats, *&c.* ſhould be wholly and only applied to the Relief and Maintenance of the Poor of the ſaid Pariſh for ever; and thereupon your Orators and the reſt of the Pariſhioners and Inhabitants of the ſaid Pariſh well hoped and believed from ſuch a hearty Concurrence and Agreement that their good and pious Endeavours would have had a ſuitable Effect: *But ſo it is*, may it pleaſe your Lordſhip, that your Orators are informed and adviſed, by the ſtrict Rules of Law ſuch Application of the ſaid 300 *l.* cannot be made without the Decree of this Honourable Court, and that ſuch additional Building may not be erected without the Licence and Conſent of the Ordinary, Patron and Rector of the ſaid Church; and for that the Right Reverend *J.* Lord Biſhop of, *&c.* Biſhop of the ſaid Dioceſe, *W. B.* Eſq; Patron of the ſaid Pariſh Church, and the Reverend *M. P.* Clerk, Rector and Incumbent of the ſaid Church, are willing to concur in ſo good an Undertaking; and for that the ſaid *N. P.* is alſo willing to pay and advance the ſaid Sum of 300 *l.* now in his Hands to the Church-wardens of the ſaid Pariſh for the Purpoſes aforeſaid, provided he may be indemnified by Decree of this Court for ſo doing; and for that the preſent Overſeers of the Poor of the ſaid Pariſh of, *&c.* are likewiſe willing to concur in ſo good an Undertaking, and comply with the Deſires of your Orators and the reſt of the Pariſhioners therein, if they were thereunto authorized by the Decree of this Honourable Court; *In tender*

Conſi-

Conſideration whereof, and foraſmuch as your Orators and the reſt of the Pariſhioners have no Means to effect ſuch their good and pious Purpoſes for Want of a good and ſufficient Power and Authority, nor can have any Redreſs of the Inconveniencies aforeſaid, or any Relief in the Premiſſes but by the Aid and Aſſiſtance of this High and Honourable Court; *To the End therefore* that the Ordinary, Patron and Incumbent aforeſaid, may be directed by the Decree of this Court, to join in granting a Licence to your Orators and the reſt of the Pariſhioners for the erecting ſuch additional Building to the Pariſh Church of, *&c.* And that the ſaid *N. P.* may be alſo thereby decreed to advance and pay into the Hands of the Church-wardens of the ſaid Pariſh, or ſuch others as your Lordſhip ſhall think fit, the ſaid Sum of 300*l.* now in his Hands, in Order to be employed in and about the ſaid Building; and that the ſaid, *&c.* Overſeers of the Poor of the ſaid Pariſh may by ſuch Decree be directed to conſent to the paying and advancing the ſaid Sum for the Purpoſes aforeſaid; and that your Orators and the Reſt of the Pariſhioners may be alſo thereby enabled to undertake and perfect the ſaid additional Building, and to that End may have Power to apply the ſaid 300*l.* in and about the ſame; and likewiſe to collect voluntary Payments and Contributions from the ſaid Pariſhioners and Inhabitants for that Purpoſe; and that the Profits and Perquiſites ariſing by letting or diſpoſing of the ſaid Pews and Seats in ſuch additional Buildings may be wholly and only employ'd towards the Relief

Relief and Maintenance of the Poor of the ſaid Pariſh of, &c. And that your Lordſhip may make ſuch further Order and Decree in the Premiſſes, as to your Lordſhip ſhall ſeem juſt and equitable.

May it pleaſe your Lordſhip to grant, &c. *Proceſs of* Subpœna *pray'd againſt the Ordinary, Patron, and Parſon, and againſt* N. P. *and the Overſeers of the Poor,* &c.

Of Writs of Subpœna *to appear and anſwer,* &c.

A *Subpœna* is a Writ whereby common Perſons are called into Chancery; in ſuch Caſes only where the Common Law fails, and hath made no Proviſion; and it requires the Defendant's Appearance by a certain Day, under a certain Penalty, to make Anſwer to the Plaintiff's Bill.

It was the antient Uſage of this Court to ſue out Proceſs of *Subpœna*, and ſerve it before the Bill was filed; but the Stat. 4 & 5 *Annæ* requires that a Bill be firſt filed before Proceſs ſhall iſſue. And to iſſue the Writ of *Subpœna ad Reſpondendum*, which is the Original or leading Proceſs of the Court, when the Suit is commenced by Engliſh Bill; after the Bill is filed, a *Certificate* is

is to be had thereof under the Hand of the Six Clerk in the Cauſe, uſually in the following Form:

Inter *A. B.* Quer. & *C. D.* Defend.

I do hereby certify that the Bill in this Cauſe is filed in my Office. Dated 5th Day of October 1728.

The Certificate being obtained, you are to apply to the *Subpœna-Office* in *Chancery-lane*, and leave the ſame with the Clerk of that Office; and alſo a *Note* in Paper of the Plaintiff's and Defendant's Names, and the Return of the Writ, as follows, *viz.*

Subpœna ad Sect. A. B. *verſ.* C. D. *Ret. immediate, &c.*

That is when the Defendant lives in Town, or within ten Miles thereof, and you would have it returnable preſently; and if it be returnable on a certain Day, it muſt be *Ret. Die Lunæ, &c.* with the Day of the Month; but if it be on a common Return-Day, which is uſual when the Defendant lives above ten Miles from *London*, then the Returns both for the *Note* and *Writ* are to be made thus:

If the *Return* is to be in *Michaelmas-Term*.

For the *Note*.		For the *Writ*.
Tres Mich.	*Dies datus Defend. ad Respondend.*	*A Die Sancti Mich. prox. futur. in tres Septiman.* (when *Mich.* Day is to come).
Mens. Michis.	Or, *Ad faciend. melior. Respons.*	Or, *à Die S'ti Mich. in tres Septimanas prox. futur.* (when past).
	Ad Rejungend.	So, *à Die S'ti Mich. prox. futur. in unum mensem.* (when to come).
Ret'.	*Ad Replicand.*	
Cro. Animarum.	*Ad Producend. Teſtes*, or	Or, *à Die S'ti Mich. in un. mens.*
Cro. Mart.	*Pro Publicatione ſuper Com.*	*prox. fut.* (when past).
Octab. Mart.		*In Cro. Animarum prox. futur.*
Quind. Mart.	*Ad Oſtend. Cauſam, allit. Publicatio concedit'*, &c.	*In Cro. S'ti Martini prox. fut.*
		In Octab. S'ti Martin. prox. fut.
		In Quinden. S'ti Mart. prox. fut.

If

If the *Return* be made in *Hillary-Term.*

For the *Note.*		For the *Writ.*	
Ret'.	*Octab. Hillar.* *Quind. Hillar.* *Cro. Pur.* *Octab. Pur.*	*Dies datus, &c. ut ſupra.*	*In Octab. Sancti Hillarii prox. futur.* *In Quinden. Sancti Hillarii prox. futur.* *In Cro. Purif. Beatæ Mariæ Virginis prox. futur.* *In Octab. Purificationis Beatæ Mariæ Virg. prox. fut.*

If the *Return* is to be in *Eaſter-Term.*

Ret'.	*Quind. Paſch.* *Tres Paſch.* *Menſ. Paſch.* *Cro. Aſcenſ.*	*Dies dat. &c. ut ſupra.*	*In Quinden. Paſch. prox. futur.* *A Die Paſch. prox. futur. in tres Septimanas.* (when before *Eaſter* Day). Or, *à Die Paſch. in tres Septiman. prox. futur.* (when after). *A Die Paſch. prox. futur. in unum menſem*; or, *in un. menſ. prox. fut.* *In Cro. Aſcenſ. Dom. prox. futur.*

If

If the *Return* be in *Trinity-Term.*

For the *Note.*		For the *Writ.*	
Ret.	*Cro. Trin.* *Octab. Trin.* *Quind. Trin.* *Tres. Trin.*	*Dies dat. &c. ut supra.*	*In Cro. Sanctæ Trin. prox. fut.* *In Octabis Sanct. Trin. prox. futur.* *In Quinden. Sanctæ Trin. prox. futur.* *A Die Stæ Trin. prox. futur. in tres Septiman.* (when before *Trinity* Sunday). Or, *à Die Stæ Trin. in tres Septimanas prox. fut.* (when after).

And

And the ſame Forms are to be obſerved in the Returns as well of all Writs of *Subpœna*, as other Writs in this Court: Alſo there muſt be fifteen Days between the *Teſte* and Return of every Proceſs after the *Subpœna*.

If your *Subpœna* is returnable *immediate*, or *indilate*, then inſtead of the Words *à Die S'ti Michaelis*, *&c.* ſay, *indilate poſt Receptionem hujus Brevis*, *&c.* But this Proceſs immediate can only be had when the Party lives in or near *London*, as is before obſerved; of which *Affidavit* muſt be made, and a *Petition* to the Maſter of the Rolls, ſetting forth the ſame and the Suit commenced, and a Motion is to be had thereupon.

Affidavit *that the Defendant lives near* London.

Inter *A. B.* Quer. & *C. D.* Def.

'E. F. of, *&c.* maketh Oath, That *C. D.* the 'Defendant in this Cauſe now liveth at '*Hampſted* near *London*; or liveth at, *&c.* 'within ten Miles thereof, and ſo hath done for 'ſome Time paſt.'

A Petition *for a* Subpœna *returnable* immediate.

A. B. *contra* C. D.

To the Right Honourable the Maſter of the Rolls, &c.

Sheweth,

'THAT your Petitioner, the Complainant, 'having exhibited his Bill in this Court 'againſt the Defendant, praying to be relieved 'in a Cauſe of, *&c.* And for that the ſaid De-'fendant liveth at *Hampſted* near *London*, as 'by the Affidavit annexed doth appear.

'*Your Petitioner therefore humbly* '*prays, That he may have a* Sub-'pœna *againſt the ſaid* C. D. *re-*'*turnable* immediate, &c.

The *Subpœna* to anſwer may be made returnable three Ways; either *immediate*; or upon common Days of Return; as from the Day of *Eaſter*, in fifteen Days, *&c.* or on a Day certain, after any of the uſual Returns, alſo after any of the great Feaſts from whence the Returns take their Names: And the Words *prox. poſt*, or *prox. ante*, muſt be added where it is requiſite, and be tranſpoſed when the great Feaſts are to come, or are paſt.

If the Writ is returnable on a certain Day of the Month, (and in Term-time it is needleſs to have it return'd *immediate*, for it may be on

any Day certain) it muſt be in Term; unleſs Cauſe be ſhewn, on Petition or Motion, for having it return'd in the Vacation.

In the ſuing out this *Subpœna*, if there are many Plaintiffs, all of them need not be named in the Writ, only the Firſt with an *& al.* after this Manner: *Subpœn. ad Sect.* A. B. *& al. verſus* C. D. *&c.* But all the Defendants ought to be named in the Writ; tho' you can put but three Defendants Names in one Writ, in which Caſe a Man and his Wife are admitted to be one; if there are more Defendants, ſeveral *Subpœna's* are to be had. And if any of the Defendants be a Nobleman, and a Peer of the Realm, then no *Subpœna* is awarded againſt him, but a Letter is ſent to him by the Lord Chancellor or Keeper: Tho' if ſuch Nobleman appear not upon ſuch Letter, then Proceſs of *Subpœna* may iſſue againſt him; but the following Proceſs muſt be only *Diſtringas*, *&c.* not Attachment.

A Letter *from the* Lord Chancellor *to a Nobleman to appear*, &c.

My Lord,

'AFter my hearty Commendations to your 'Lordſhip, This is to inform you, that 'there is a Bill of Complaint exhibited in the 'High Court of Chancery againſt your Lord-'ſhip by *B. A.* of, *&c.* Eſq; Plaintiff, of which 'I thought fit to give your Lordſhip Notice, 'rather by this Letter than by awarding his 'Majeſty's ordinary Proceſs againſt you; where-'fore, I do at the Requeſt of the ſaid Com-

'plainant, (according to the Manner uſed to 'Perſons of your Quality) deſire your Lordſhip 'to give Order for Entring of your Appearance, 'and putting in your Anſwer to the ſaid Bill, 'according to the uſual Courſe in ſuch Caſes, 'with all convenient Speed, or at or before, *&c.* 'Not doubting your Care wherein, and that 'your Lordſhip will have the Regard which 'thereto appertaineth, I bid your Lordſhip hearti-'ly farewel; and am,

Your Lordſhip's humble Servant, &c.

If neither of the Defendants be a Peer, on leaving the Certificate of the Bill filed, and the Note for the Writ of *Subpœna* at the *Subpœna*-Office, and paying the Clerk there 2 *s.* for his Fee, if two Defendants, and 3 *s.* if three Defendants, he then gets it ſealed, for which you pay 1 *s.* 6 *d.* more, *viz.* 6 *d.* for the Seal, and 1 *s.* the King's Duty: But this is where the Buſineſs is done at a general Seal; for if it be at a private Seal in the Time of Vacation, which in Cauſes of Moment is ſometimes neceſſary, you muſt pay two Guineas to the Chancellor for opening the Seal, beſides the Fees of the Writ.

In the *Subpœna ad Reſpondend.* Care muſt be taken that there is no Miſtake in the Body of the Writ, which would give Advantage to the Defendant; and any Miſtake in the Parties Names, either Plaintiff or Defendant, or in the Return, or Form of the Writ, *&c.* vitiates the Writ: If the Label and Body agree not, the Party ſerved with the ſame may take Advantage

thereby; tho' if there be a Miſtake in the Label only, it is ſaid to be otherwiſe.

This Writ is to be *ſerved* before the Return thereof is paſt; and if the Service be on the ſame Day it is returnable, if it be before Noon, and the Riſing of the Court of Chancery, the Service will be good; and the Defendant ſo ſerved ſhall be bound to an Appearance with all Speed: It is uſually ſerved by the Delivery of the Writ it ſelf under Seal to the Defendant; or by ſhewing to him the Writ under Seal, and delivering him a Note or Label of the Day of his Appearance: But this Note is generally when there are more Defendants than one in the Body of the *Subpœna*, ſo as the Body of the Writ may be reſerved to be left with the laſt. *Ordin. Canc.* 116, 117.

Or the Writ may be left at the Dwelling-houſe of the Defendant, with one of his Family, or at his Place of Reſidence: Alſo it is conceived, that it may be a good Service to leave the Writ hanging upon the Door of the Defendant's Houſe, when he hides himſelf and refuſes to be ſpoken with; or to put into the Houſe under the Door, or within the Window of the Houſe where the Party doth dwell, *&c.* But that is when it is preſumed it afterwards comes to his Hands; that he might be in the Houſe at the Time, or had Notice of it. Where the *Subpœna* is had againſt Husband and Wife, Service to the Husband alone, and giving Notice it is againſt him and his Wife, is a good Service as to both; and for Want of an Appearance, Attachment may be had againſt the Wife, or againſt

gainſt both of them. *Cary*'s *Rep.* 89, 101, 103, *&c.*

If any of the Defendants do not appear at the Return of the *Subpœna*, upon *Affidavit* made of the Service thereof; as that it was ſerved on the Defendant himſelf, or left at his Dwelling-houſe with his Wife or Servant, or hang'd at his Door, *&c.* ſo that it may be preſumed he had Notice of the ſame; or if the Deponent ſwears he did ſee another ſerve him therewith, or that he heard the Defendant confeſs he had been ſerved, *&c.* In ſuch Caſes, an Attachment ſhall be had againſt the Defendant. But if the *Affidavit* do not prove a good Service, no Attachment can be had upon it; and regularly Attachment doth not iſſue for Want of Appearance until there is certain and poſitive Oath made of the Time, Place, and Manner of ſerving the *Subpœna*, inſerting therein the Return of the Writ, *&c.* whereby it may appear to the Court, whether the Party be in Contempt, or not. *Ord. Canc.* 115.

Upon this Affidavit, the *Attachment* iſſues; and after the Attachment return'd *Non eſt Inventus*, the Plaintiff may take out an *Attachment with Proclamations*; which being alſo return'd *Non eſt Invent.* by the Sheriff, there ſhall go forth a *Commiſſion of Rebellion*, for the Apprehending of the Defendant, and bringing him to the *Fleet* Priſon; and if the Party ſtand farther out in Contempt, a *Serjeant at Arms* may be ſent out to take him; and if he cannot apprehend him, *&c.* a *Sequeſtration* may be had againſt his Lands. If the Defendant appears be-

fore he is taken by any of the afore-mentioned Writs, a *Superſedeas* may be granted: But when he is taken upon any of theſe Proceſſes, he muſt pay Coſts, *viz.* 20 *s.* if the Serving of the *Subpœna* were upon his Perſon, otherwiſe it is but 10 *s.* on the firſt Attachment, and every ſucceeding Proceſs double ſo much; and either give Bond with Sureties for his Appearance, or enter his Appearance with the Regiſter. *Cary* 72, 94, 105.

Note; No Proceſs is to be returned by the Sheriff with a *Non eſt Invent.* except it be made into the County where the Party lives; but the Perſon in Contempt may be arreſted upon ſuch Proceſs in any Place where he can be met with. If any one ſerved with a *Subpœna*, doth Injury or Wrong to the Perſon who acted in Service of it; or ſhall ſet at naught or contemn the Writ it ſelf, or the Authority of the Court from whence it iſſues, on Oath made thereof and Motion, he ſhall be committed to the *Fleet*, *&c.* *Ibid.* 92, 100. Vide *Attachment and other Proceſs for Contempts.*

Form of a *Subpœna ad Reſpondendum.*

GEorgius *Dei Gra.* Magn. Britanniæ, Franciæ, *&* Hiberniæ *Rex*, *Fidei Defenſor'*, *&c.* C. D. *Gent. Salut. Quibuſdam certis de Cauſis coram nobis in Cancellaria noſtra propoſitis, Tibi præcipimus firmiter injungentes, Quod omnibus aliis prætermiſſis & excuſatione quacunque ceſſante in propriâ Perſonâ tuâ ſis coram nobis in dictâ Cancellariâ noſtrâ à Die Sancti* Michaelis

chaelis *prox. futur. in tres ſeptimanas, &c.* (*vel Die Lunæ, &c.* or *indilate poſt receptionem hujus Brevis*) *ubicunque tunc fuerimus* ad Reſpondend. *ſuper iis quæ tibi objicientur tunc ibid. Et ad faciend. ulterius & recipiend. quæ dict. Cur. noſtra Conſideraverit in hac parte; Et hoc ſub pœna Centum librarum nullatenus omittas: Et habeas tunc ibi hoc Breve. Teſte meipſo apud* Weſtmonaſterium *tertio die* Julii, *Anno Regni noſtri, &c.*

This *Subpœna* is where there is one Defendant only; and the 100*l.* Penalty, which gives it the Name of *Subpœna*, ſeems to be inſerted only *in Terrorem*, it being never levied; but for Want of Anſwer, Attachment may be had.

Another *Subpœna to Anſwer*, where there are ſeveral Defendants.

GEorgius, *&c.* A. B. C. D. & E. F. *Salutem, Quibuſdam certis de Cauſis coram nobis in Cancellaria noſtra propoſitis vobis præcipimus firmiter injungentes Quod omnibus aliis prætermiſſis & excuſatione quacunque ceſſante in propria Perſona veſtra ſitis coram nobis in dicta Cancellaria noſtra in Craſtino Sanctæ* Trinitatis *prox. futur. ubicunque tunc fuerimus* ad Reſpondend. *ſuper iis quæ vobis objicientur tunc ibid. Et ad faciend. ulterius & recipiend. quæ Curia noſtra conſideraver. in hac parte; Et hoc ſub pœna Centum Librar. nullatenus omittas, vel omittatis; Et habeas vel habeatis tunc hoc Breve. Teſte, &c.*

Affidavit *of ſerving a* Subpœna ad Reſpondend.

In Canc. Inter *A. B.* Quer. & *C. D.* Def.

'E. F. of, *&c.* maketh Oath, That he, this 'Deponent, did on the Day of, *&c.* 'ſerve the Defendant *C. D.* with a Writ of *Sub-* 'pœna out of this Honourable Court, by deli- 'vering the ſaid Writ under Seal to the ſaid 'C. D. whereby the ſaid *C. D.* was directed to 'appear in the ſaid Court on the Morrow of the 'Holy Trinity then next, *&c.* at the Suit of 'A. B. the Complainant.

If there are ſeveral Defendants ſerved with a Writ of *Subpœna*, the Affidavit runs thus:

An Affidavit *of ſerving a* Subpœna *on ſeveral Defendants.*

In Canc. Inter *A. B.* Quer. *C. D. E. F.* & *G. H.* Def.

'L. K. of, *&c.* maketh Oath, That on, *&c.* 'He, this Deponent, did ſerve the De- 'fendant *C. D.* and on, *&c.* did ſerve the De- 'fendant *E. F.* and did on, *&c.* ſerve the De- 'fendant *G. H.* with a Writ of *Subpœna* under 'the Seal of this Honourable Court, by deli- 'vering to the ſaid *C. D.* and *E. F.* two Labels 'thereof, and by ſhewing them the Body of the 'ſaid Writ under Seal, and by delivering unto 'the ſaid *G. H.* the Body of the ſaid Writ; by 'which

'which Writ the ſaid Defendants were directed 'to appear in this Court on, *&c.* at the Suit of 'the ſaid *A. B.* Complainant.'

In Caſe there be two ſeveral *Subpœna's* ſerv'd on many Defendants, then the Affidavit of Service of both Proceſſes may be in the following Form:

Affidavit *of ſerving* two ſeveral Subpœna's.

In Canc. Inter *A. B.* Quer. *C. D. E. F. G. H. I. K. L. M.* &c. Def.

'A. P. of, *&c.* Gent. maketh Oath, That he, 'this Deponent, did on, *&c.* ſerve the 'Defendant *C. D.* with a *Subpœna* iſſuing out 'of this Honourable Court, and under the Seal 'of the ſame Court, by delivering the Label of 'the ſaid *Subpœna* unto the ſaid *C. D.* and at the 'ſame Time ſhewing him the Body thereof under Seal, as aforeſaid; and this Deponent further maketh Oath, That he did on, *&c.* ſerve 'the Defendant *E. F.* with the ſaid *Subpœna*, 'by delivering him a Label, *&c.* And alſo that 'he did on, *&c.* ſerve the Defendant *G. H.* with 'the ſaid *Subpœna*, by delivering him the Body 'thereof under Seal, as aforeſaid. And this 'Deponent further ſaith, That on, *&c.* he did 'ſerve the other Defendants *I. K.* and *L. M. &c.* 'with a *Subpœna* out of this Honourable Court, 'and under the Seal of the ſaid Court, by delivering to each of them the ſaid *I. K.* and 'L. M. a Label of the ſaid *Subpœna*, and ſhewing

'ing them the Body thereof under Seal, as a-
'foreſaid, the ſaid Body being left with, *&c.*
'Which ſaid two ſeveral *Subpœna's* were both
'returnable the Day, *&c.* and for the ſaid ſe-
'veral Defendants then to appear in this Court
'at the Suit of tho ſaid *A. B.* the Complainant,
'as by the Labels thereof appear'd to this De-
'ponent.'

If a Perſon gives his Oath that he ſaw another ſerve the Writ of *Subpœna*, who cannot be found to make Affidavit of the Service; or that he heard the Defendant confeſs he was ſerved with the *Subpœna*, the Affidavit muſt be as follows:

Affidavit *of ſeeing* another Perſon *ſerve a* Subpœna, &c.

In Canc. Inter *A. B.* Quer. & *C. D.* & *E.* Ux. Def.

'A. B. Complainant maketh Oath, That on,
'*&c.* laſt, he did ſee *G. H.* of, *&c.* ſerve
'the Defendant *C. D.* with a Writ of *Subpœna*
'iſſuing out of this Honourable Court, by de-
'livering the ſaid Writ under Seal to the ſaid
'*C. D. &c.* or by leaving the ſame with, *&c.*
'his Servant, at his Dwelling-houſe, or uſual
'Place of Reſidence in, *&c.* whereby the De-
'fendant was required to appear in this Court
'on, *&c.* at the Deponent's Suit, and had No-
'tice given, that it was againſt him and his
'Wife; ſince the Service whereof the ſaid *G. H.*
'is

'is dead, or abſconded, ſo as he cannot be 'found.'

Affidavit *of the Defendant's* Confeſſing the Service.

In Canc. Inter *A. B.* Quer. & *C. D.* Def.

'E. F. Gent. maketh Oath, That on, *&c.* 'laſt, at, *&c.* he heard *C. D.* the De-'fendant own, and confeſs to him, this Depo-'nent, that he the ſaid *C. D.* was ſerved with 'a Writ of *Subpœna* out of this Honourable 'Court, returnable on, *&c.* at the Suit of *A. B.* 'the Complainant.'

On any of theſe Affidavits of Service of the *Subpœna*, for Non-appearance of the Defendant, the Writ of *Attachment* goes forth, and after that *Attachment with Proclamations*, and *Commiſſion of Rebellion*, *&c.* the Forms of which, ſee under *Proceſs*.

There are many other *Subpœna's* in Chancery, beſides the *Subpœna* to anſwer, *viz.*

A *Subpœna* for *Coſts*.

A *Subpœna to make better Anſwer*.

A *Subpœna ad Replicandum*, to reply.

A *Subpœna ad Rejungend.* to rejoin.

A *Subpœna ad Revivendum*, *&c.* to revive Proceedings.

A *Subpœna ad Teſtificand.* for Witneſſes to teſtify.

A *Sub-*

A *Subpœna ad audiend. Judicium*, to hear Judgment.

A *Subpœna pro Publicatione.*

A *Subpœna duces Tecum*, for Writings, Evidences, *&c.*

All *Subpœna's for Coſts*, and *Duces Tecums*, have but one Perſon named therein, to whom they are directed; and they are to be ſerved on ſuch Party perſonally.

Where a Defendant has once appeared, or has a certain Clerk in Court, (of which Oath muſt be made) then upon Affidavit that you cannot find the Perſon, to ſerve him perſonally with a Writ of *Subpœna* for Coſts, an Order of Court may be obtained upon Motion or Petition, that the ſame ſhall be left with the Clerk in Court, which ſhall be deemed as good as if the Defendant had been perſonally ſerved.

Formerly Coſts were paid by the Complainant for Want of a Bill, when Proceſs of *Subpœna* iſſued before the Exhibiting of the Bill, and the Defendant might have a *Subpœna* and Attachment for the ſaid Coſts, *&c.* But now the *Subpœna* for Coſts is uſually granted to the Complainant againſt the Defendant for Want of an Anſwer, *&c.* to the Complainant's Bill.

Every *Subpœna to make a better Anſwer*, ſhall alſo contain a Clauſe for the Payment of the Coſts ordinarily paid in that Behalf; and if upon the Service of ſuch *Subpœna*, the Coſts be not paid, the Anſwer of the Defendant ſhall not be received or filed; but Attachment and other Proceſs

Proceſs of Contempt ſhall iſſue in that Caſe, as for Want of Anſwer, at the Return of the ſaid *Subpœna*, and on Affidavit of the Service of it, *&c.*

For not Proſecuting with Effect, and unjuſt Vexation, *Subpœna's* for Coſts are granted.

A *Subpœna for Coſts*, by Order of Court.

GEorgius *Dei Gratia*, *&c.* A. B. *Gent. Salutem, Quibuſdam certis de Cauſis coram nobis in Cancellaria noſtra propoſitis, Tibi præcipimus firmiter injungentes quod tu ſolvas vel ſolvi facias* C. D. *Decem ſolid. qui eidem* C. (*vel eidem* C. *&c.* if more than one Defendant) *adjudicat. fuer. in Cancel. præd. pro Expenſis ſuis* (*vel ſuorum*) *occaſione injuſtæ vexation. Quæ ipſe* (*vel ipſi*) *nuper indebite ſuſtinuit* (or *ſuſtinuer.*) *in quadam Billâ verſ. ipſum* (*vel ipſos*) C. *&c. in eadem Canc. ad Proſecutionem tuam nuper fact. juxta formam ſtatut. inde edit. & proviſ. vel tuipſe ſis coram nobis in dictâ Canc. noſtrâ die*, *&c.* (the Day of the Return) *ubicunque*, *&c. ad Reſpondend. ſuper iis quæ tibi objicerentur tunc ibid. &c.*

The Affidavit of ſerving a *Subpœna* for Coſts againſt a Defendant for Want of Anſwer, *&c.* may be of this Form:

Affidavit

Affidavit *of Service of a* Subpœna for Coſts.

In Canc. Inter *A. B.* Quer. & *C. D.* Def.

'T. E. of, *&c.* maketh Oath, That on, *&c.* 'he, this Deponent, did perſonally ſerve 'the Defendant with a Writ of *Subpœna* out of 'this Honourable Court, by delivering the ſaid 'Writ under Seal to the Defendant; by which 'Writ the Defendant was enjoined to pay the 'Sum of, *&c.* to the Plaintiff for Coſts: And 'that he, this Deponent, did then demand the 'ſaid Sum of, *&c.* for the Plaintiff's Uſe, but 'the Defendant refus'd to pay the ſame.'

A *Subpœna for a better Anſwer* is the ſame with the *Subpœna* to anſwer, only inſtead of the Words *ad Reſpondend.* ſay *ad faciend. melior. Reſponſ.* And in the *Subpœna's to reply*, and *rejoin*, there is little Difference beſides putting the Words *ad Replicand.* or *Rejungend. &c.* in the Place of the others adapted to other Purpoſes. And no Fruit ſhall be taken of any *Subpœna ad Rejungendum*, unleſs there be a Replication entered and filed before the iſſuing out the *Subpœna* or Return thereof.

By the Orders in Chancery, it is ordained, That every *Subpœna to anſwer*, to *rejoin*, to *revive*, to *teſtify*, or to *hear Judgment*, ſhall be ſerved perſonally, or left at the Defendant's Dwelling-Houſe, *&c.* And no Clerk of this Court ſhall iſſue any Attachment for not appearing, *&c.* but upon Affidavit firſt made of the Day

Day and Place of ſuch Service of the *Subpœna*, and the Time of the Return thereof, ſo as it may be known that the Service was made, if in *London*, or within twenty Miles of it, four Days at leaſt; and if above twenty Miles diſtant, then eight Days, before the Attachment entered; and ſuch Attachment ſhall not be diſcharg'd, but upon Payment of Coſts. *Ord. Canc.* 54, 115.

A *Subpœna* ad Revivend. Cauſam.

GEorgius, *&c.* C. D. *Salutem. Quibuſdam certis de Cauſis coram nobis in Canc. noſtra propoſitis tibi præcipimus firmiter injungen. quod omnibus al. prætermiſſis & excuſatione quacunque ceſſan. in propr. Perſona tua ſis coram nobis in dicta Canc. noſtra die, &c. ubicunq; tunc fuerit ad oſtendend. bonam & ſufficientem Cauſam quare quædam Querimon.* (*vel quoddam* Decretum, *&c.*) *& Proceſſ. ſuperinde inter* A. B. *Querentem &* E. D. *patrem tuum nuper defunctum Defenden. in prædicta Canc. noſtra antehac exhibit.* (*vel fact.*) *non* Revificat' *forent*, (*Decret. geren. dat. tali die ult. præterit.*) *Et ad ulterius faciend. & Recipiend. quod dicta Cur. noſtra Canc. præd. in ea parte conſideravit; Et hoc nullatenus omittas, &c.*

In order to bring a Cauſe to Hearing, the *Subpœna ad Teſtificand.* is iſſued for the Witneſſes to appear before Commiſſioners, *&c.* and teſtify their Knowledge; and their Depoſitions having paſt

paſt Publication, then the Cauſe is heard and determined.

A Subpœna *ad Teſtificand'*.

GEorgius *Dei Gra. &c.* E. F. G. H. J. K. *&c. Salut. Vobis Præcipimus firmit. Injungen. Quod omnibus al. prætermiſſis Excuſatione quacunq; ceſſante in propriis Perſonis veſtr. ſitis coram* L. M. *&* N. O. *&c. Commiſſionar. noſtris ad certum diem quem lator hujus Brevis nobis prefixit* ad Teſtificand. *& veritatem dicend. ex parte* A. B. *verſ.* C. D. *Et hoc ſub pœna Cent. libr. nullatenus omittat. Teſte, &c.*

Subpœna's ad Audiendum Judicium are iſſued by Note in Writing under the Six Clerk's Hand, who is the Party's Attorney, warranting the ſame.

And a *Subpœna* to hear Judgment requires Perſonal Service on the Defendant, or to be left with one of his Family; alſo fourteen Days Notice is to be given before the Time to hear Judgment, but if it be in the ſhort Vacation between *Eaſter* and *Trinity* Terms, ten Days Notice only is uſual: If the Defendant is not to be found, and he hath no certain Place of Reſidence, or he be abroad beyond the Seas, *&c.* the Court on Affidavit made thereof will order that the Leaving the *Subpœna* with his Attorney or Clerk in Court ſhall be a ſufficient Service of the Writ.

A Defendant in a Cauſe was here, and the other Defendants at *Leghorn*, and by Order a

Subpœna left with him was to be good Service for the other Defendants.

A *Subpœna* Ad audiend. Judicium.

GEorgius, *&c. Salutem Præcipimus vobis firmit. injungen. Quod Excuſatione quacunque ceſſan. in propriis Perſonis veſtris ſitis coram nobis in Cur. Cancellar. noſtr. ubicunque tunc fuer. tali die, &c.* Ad Audiend. Judicium *& final. Determinationem, &c. inter* A. B. *Quer. & te præfat.* C. D. *Defend. adhuc indeterminat. penden. Et hoc nullatenus omittatis, &c.*

Affidavit *of ſerving a* Subpœna to hear Judgment.

In Canc. Inter *A. B.* Quer. & *C. D.* Def.

'E. F. of, *&c.* Gent. maketh Oath, that he 'this Deponent did on, *&c.* ſerve the 'Defendant *C. D.* with Proceſs of *Subpœna* to 'hear Judgment in this Cauſe, iſſuing out of 'this Honourable Court, by leaving the ſame 'with, *&c.* one of the Defendant's Servants, 'whereby the ſaid Defendant was required to 'attend this Honourable Court on, *&c.* and hear 'the Judgment of the ſaid Court in the Cauſe 'now therein depending.

On the Hearing, the Court will decree the Matter; and if the Decree be not performed, a *Subpœna Scire facias* may be brought in the Chancery for Performance thereof.

A *Subpœna Scire facias* to perform a *Decree.*

GEorgius, &c. C. D. *Salutem, quibuſdam certis de cauſis coram nobis in Canc. noſtr. propoſitis, tibi præcipim. firmiter injungen. quod omnibus aliis pretermiſſis & Excuſatione quacunque ceſſante in propria Perſona tua ſis coram nobis in dicta Cancellaria noſtr. die, &c. ubicunque tunc fuerit ad oſtendendum bonam & ſufficientem cauſam quare quoddam* Decretum *per dict. Cur. noſtr. antehac fact. in Materia nuper in Controverſia inter, &c. non performaretur ſicut per præfat', &c. fieri debuit ſecundum effectum veramque Intentionem Decreti præd. Et ad faciend. ulterius & recipiendum quod dict. Cur. noſtr. conſideraverit in hac parte; & hoc ſub periculo incumbente nullatenus omittas. Teſte, &c.*

The *Subpœna duces tecum* is awarded when the Defendant has confeſſed by his Anſwer that he hath ſuch Writings in his Hands as are prayed by the Bill to be diſcovered or brought into Court.

If the Defendant by his Anſwer confeſſes the having in his Cuſtody any Writings material for him to be examined upon, or confeſſed to belong to the Plaintiff, a *Duces tecum* may be taken out by the Plaintiff, of Courſe without Motion, for the Defendant to bring them into Court, or to ſhew Cauſe why he ought not to do it: But where the Defendant either doth not confeſs the having ſuch Writings in his Hands or Cuſtody,

Cuſtody, or makes his Title to the Matter in Queſtion by them, or ſhews any Title to the ſaid Writings by his Anſwer, it will be no Contempt if he neither brings them into Court, nor ſhews Cauſe to the contrary.

And if the Caſe upon the Defendant's Anſwer appears to be ſuch, and the Plaintiff notwithſtanding proſecute a Contempt in that Behalf, the Defendant ſhall be diſcharged thereof, and have his Coſts.

A *Subpœna duces tecum* for Writings confeſs'd in the Defendant's Anſwer.

GEorgius, &c. C. D. *Salut. Quibuſdam de certis Cauſis coram nobis in Canc. noſtr. propoſitis, &c. Et in quodam Ordine in dict. Cancellaria noſtr. inter* A. B. *Quer. & te præfat.* C. D. *Defenden. geren. dat. ſecundo die Julii, &c. nuper fact. particulariter mentionat. & expreſs. Tibi præcipimus firmiter injungendo quod omnibus al. prætermiſ. & Excuſatione ceſſan. in propria Perſona tua ſis coram nobis in dicta Cancellar. noſtra tali die, &c. ubicunque tunc fuer. ducens vel duci faciens quoddam Scriptum ſub manibus & ſigillis præfat. Quer. &* E. F. *&c. quæ per Reſponſ. tuam ad Querimon. præd. Quer. nup. exhibitam in manibus & Cuſtod. tuis remanere Confeſſus es, vel tunc & ibid. Oſtendens vel Oſtendi facien. bonam & ſufficientem Cauſam in contrarium inde ſecundum tenorem & veram intentionem Ordinis præd. Et hoc ſub periculo incumbente nullaten. omitt. Teſte, &c.*

Theſe are the uſual Writs of *Subpœna* iſſuing out of the Court of Chancery, as well to *Anſwer* as in other *Proceedings* throughout the whole Cauſe.

Of Anſwers *to Bills in Chancery, and of the Defendant's Appearance in Order thereto.*

BEfore the Defendant puts in his *Anſwer* to the Plaintiff's *Bill*, *Appearance* is neceſſary; and the Defendant's Appearance is either *voluntary*, or *compulſory*.

The *voluntary* Appearing is when the Defendant upon the Return of the *Subpœna ad Reſpondend.* comes in and enters his Appearance in the Book kept for that Purpoſe in the Six Clerk's Office; and it is *compulſory*, where he is taken and brought in upon an Attachment, Commiſſion of Rebellion, or Serjeant at Arms, in which Caſe he muſt enter his Appearance with the Regiſter, and alſo in the Six Clerk's Book as aforeſaid.

A Defendant is not bound to appear 'till the Return of the Writ of *Subpœna*, altho' he be ſerved with it never ſo long before: And if his Appearance be voluntary, then if he lives within 20 Miles of *London*, he has four Days Time to appear after the Return of the *Subpœna*, excluding the Return-Day; but if he lives above 20 Miles from *London*, he has eight Days to

appear after the Return in like Manner. Tho' in the firſt Caſe if he be ſerved with the *Subpœna* ſix or ſeven Days, or more, before the Return, the Defendant ſhall have but two Days after it to appear: If he is ſerved but five Days before the Return, he ſhall have three Days after, and if only four Days before, four Days after it; and ſo if he be ſerved but three, or two Days, or one Day, before the Return, or even the very Morning thereof, four Days after the ſame are allowed for Appearance; when the Defendant lives within 20 Miles Diſtance of *London*. If he lives beyond that Diſtance, then if he be ſerved in the Morning of the Return, or within eight Days before, in each Caſe the Defendant hath eight Days to appear; but where he is ſerved eight Days or more before the Return, he has only two Days after it to appear in.

In Strictneſs this is the Rule and Practice of the Court; but uſually a Defendant that lives above 20 Miles from *London* has Leave given him, upon Motion, *&c.* to anſwer by Commiſſion, and then he hath longer Time, *viz.* commonly 'till the firſt Day of the following Term, or longer on good Cauſe ſhewn. And notwithſtanding the *Subpœna* be returnable *immediate*, the Defendant has four Days to appear, he living within 20 Miles; and if above 20 Miles, eight Days as before mentioned: Tho' for ſuch a *Subpœna*, Affidavit is to be made, as I have already obſerved, that the Defendant liveth in Town, or within 20 Miles.

And if the Defendant appears not within the Times appointed, on Affidavit that he was ſerved

with Proceſs of *Subpœna*, then the Plaintiff hath an Attachment, and the following Proceſs of Contempt, *&c.*

The uſual Way for the Defendant to enter his Appearance, is to retain one of the ſworn Clerks in the Six Clerk's Office to appear for him, whoſe Fee is 3*s.* 4*d.* and he enters the ſame in the Appearance-book of the Office; which Book hath the Day of the Month and Year at Top, and under each Day, Appearances are entered and ſign'd by the Clerk as follows, *viz.*

A. B. *ad Sectam* C. D. *& al. comperuit per* E.

If the *Subpœna* be returnable at a Day certain, tho' that Day be the laſt but one of the Term, the Defendant muſt *appear* and *anſwer* by that Day ſeven-night, *i. e.* in eight Days, except Cauſe be ſhewn for longer Time: But if it be returnable the laſt Return of the Term, then the Defendant is to appear by the firſt Return of the Term following.

A *Subpœna* is returnable ſo near the End of the Term, that there cannot be a Day given to anſwer, yet the Defendant is to anſwer at his Peril that Day ſeven-night after the Day of his Appearance, altho' it be out of Term; for the Chancery is always open. And if a *Subpœna* returnable *immediate*, is ſerved the laſt Day of the Term, before the Riſing of the Court, the Defendant is to anſwer, *&c.* by that Day ſeven-night, unleſs he ſhew Cauſe for ſome longer Time.

After

After the Defendant hath appear'd, he muſt firſt take out an Office-Copy of the Plaintiff's Bill, which coſts him about 12 *d. per* Sheet, and with this Copy he applies to his Counſel learned in the Law, who will adviſe him either to *anſwer*, or *plead* or *demur* to the Bill; for in many Caſes the Defendant may refuſe to anſwer, but plead ſome Matter in Law why he ought not to anſwer, or he may demur to the Plaintiff's Bill, and the Plea or Demurrer being allow'd, the Bill will be diſmiſs'd; but if overruled, the Defendant is then ordered by the Court to pay Coſts, and to anſwer the Bill. But it is moſt frequent to give in a fair and direct Anſwer to the Plaintiff's Bill; and the Defendant having appear'd, the Plaintiff's Clerk in Court may give the Defendant's Clerk on the Day after the Coſts Day, which is the next Day after the Return of the Writ of *Subpœna*, or on the Day after his Appearance, a Rule to anſwer by that Day ſeven-night.

The Rule to anſwer being entered with the Regiſter, if the Defendant do not then anſwer, or ſatisfy the Court by Affidavit of ſome Cauſe why he cannot, and Motion thereupon for longer Time; or if the Defendant doth not procure a *Dedimus* to take his Anſwer in the Country, and enter the Cauſes thereof with the Regiſter, then the Plaintiff may have an Attachment againſt the Defendant, *&c.* If no Day be given the Defendant to anſwer, he hath Liberty to anſwer any Time during the Term, (except Affidavit be made by the Plaintiff that the Defendant is in Town, or within 10 Miles) and if

he neglects to anſwer within that Time, an Attachment may be entered with the Regiſter without Motion, *viz.* for that the Defendant departed without anſwering, therefore an Attachment is granted.

In all Caſes of delaying to anſwer, the Defendant muſt upon Oath ſhew to the Court the Cauſes of the Delay, which may be in divers Reſpects; as where the Matter contained in the Bill is ſuch that he cannot give an Anſwer thereto, without Conference had with ſome other Perſons named in the ſaid Bill, or to whom the Bill refers, or whom the Matter thereof concerneth; or when the Plaintiff's Bill chargeth the Defendant with having of Goods or Chattels of the Complainant's, and is to make Diſcovery what they are; in ſuch Caſe, if the Goods are in the Country, and he here in Town, he may make Oath that he cannot make perfect Anſwer to the Bill without Sight and Peruſal of the Goods: So alſo when the Defendant cannot make direct Anſwer, without Sight of ſome Writings, or Evidences, which he hath in the Country, *&c.* he may make Affidavit thereof to excuſe his anſwering in the uſual Time; but the Place in the Country where thoſe Parties live, and the Goods, Writings or Evidences are, is to be above 20 Miles from *London*; for otherwiſe he muſt anſwer within eight Days after his Appearance, if farther Time be not given him by Order of Court.

On Oath made as aforeſaid, the Defendant's Anſwer will be ſpared 'till the firſt Day of the next Term; and ſometimes of the Term following:

lowing: And where a Plaintiff cannot be found, the Court upon Affidavit and Motion, will order the Anſwer to ſtay 'till the Plaintiff's Clerk in Court by Note in Writing ſhews where he lives. There may be likewiſe Oath made by another Perſon, either the Defendant's Solicitor, Servant, or ſome Neighbour, that the Defendant is ſick, or diſabled to travel without Danger of Life, *&c.* and upon ſuch Oath made, if the Plaintiff refuſe to allow of a *Dedimus Poteſtatem* on the Behalf of the Defendant for the Taking his Anſwer, the Court of Chancery on Motion or Petition will order it; and the Order ſo obtained is to be carefully entered in the Regiſter's Office, and the Affidavit upon which the Order is grounded to be filed in the Affidavit Office.

When the Defendant doth not appear, or after Appearance doth not anſwer, nor by way of Excuſe ſheweth any of the Reaſons aforementioned, in ſuch Caſe an Attachment is awarded againſt him as aforeſaid; which Attachment muſt be entered in the Houſe-book of the Six Clerk's Office, and alſo in the Regiſter-book, expreſſing the Cauſe of the Iſſuing of the ſaid Attachment; as that the Defendant appeared, and departed without Anſwer, or that he anſwered not by the Day prefixed, or that he did not return the *Dedimus* at the Day, *&c.*

If a Defendant does not anſwer in Time, an Attachment iſſues of Courſe; but the Court, on Motion, ordinarily grants ten or fourteen Days or more, to anſwer upon Cauſe ſhewn, where the Defendant is within twenty Miles of *London*;

don; and if the Defendant be above twenty Miles off, he has of Courſe a *Dedimus* to take his Anſwer in the Country. Affidavit was made that the Defendant was ſick and weak, and ſo diſorder'd in his Mind, that he was not able to anſwer; the Court upon Motion order'd Proceſs of Contempt to ſtay ſome reaſonable Time, 'till a Maſter ſhould go out and ſee if he were capable of Anſwering or not.

A Husband and Wife Defendants having appeared, he only anſwers the Plainiff's Bill, an Attachment may be iſſued againſt both, when the Time of Anſwering is out, unleſs there be an Order for him and his Wife to anſwer ſeparately: For though the Wife is not generally to anſwer without the Husband, yet in ſpecial Caſes the Court will on Motion order that ſhe ſhall anſwer alone, without which Order, a ſole Anſwer made by her will be ſuppreſs'd. As where the Husband was out of the Kingdom, and could not be brought to anſwer a Breach of Truſt in which the Wife was moſtly concerned, the Court order'd that ſhe ſhould anſwer alone.

If there be many Defendants, and one or ſome have anſwered, but the reſt not; in ſome Caſes, the Plaintiff may proceed againſt that One alone, and afterwards againſt the reſt: And notwithſtanding the Defendant's Anſwer uſually concludes only himſelf, and does not affect another Defendant; where one Defendant anſwered, and the other refuſed, the Court ſaid he ſhould be bound by the other's Anſwer, if upon it the Cauſe were againſt him.

In caſe the Defendant ſtands out all Proceſs of Contempt after an Appearance, and doth not anſwer, he ſhall be committed; and in ſuch Caſe, the Court will take the Matter of the Bill *pro confeſſo*, and decree it accordingly. Alſo ſo it is where the Defendant is in Cuſtody upon any Proceſs of Contempt, and being brought into Court, and having the Bill read to him, he is required to anſwer, but obſtinately refuſes to do it. And if he be in Priſon at the Suit of any other, and ſtandeth out all Proceſs of Contempt, he ſhall be ſent for by *Habeas Corpus*, and brought into Court; where if he refuſe to anſwer, a Day ſhall be given him, and if he doth not then anſwer, the Bill ſhall be taken *pro Confeſſo*. But the Defendant muſt have appeared, or been ſome Way in Court, or no Decree *pro Confeſſo*, or otherwiſe, can be againſt him. 1 *Chauc. Rep.* 282. Where a *Priſoner* has appeared to a Bill, he ſhall not be brought up to anſwer 'till the Time for anſwering is out: But if ſuch Defendant will not anſwer, an Attachment is to be entered againſt him, and Motion made for a *Habeas Corpus* to bring him to the Bar, to ſhew Cauſe why he doth not anſwer, *&c.*

An Anſwer is not to be reputed as ſuch 'till filed; and the Anſwer is not to be filed 'till the Coſts for a Contempt in not anſwering are paid by the Defendant; and 'tis ſaid it is ſo though the Plaintiff hath joined in a Commiſſion for anſwering. Yet where the Anſwer is in the Office and ſhewed the Plaintiff's Clerk, if it contains any Thing which gives an Anſwer to ſome Sug-

geſtion

geſtion of the Plaintiff's, whereby he prays a Favour of the Court, the Plaintiff is to take Notice of it: If the Plaintiff prays a *Ne exeat Regnum*, upon an Information and a Belief that the Defendant is going beyond Sea; if the Defendant's Anſwer be in the Office as aforeſaid, and he therein denies that he is about or deſigns to go, the Plaintiff ought not to have the Writ, for by ſuch Anſwer he has ſufficient Reaſon to be ſatisfied that he needs it not. And a Copy of an Anſwer ſwore, but unfiled, given to the Plaintiff to enable him to defend his *Injunction*, on Notice that the Defendant would move to diſſolve it, upon Matter contained in the Anſwer, was held ſufficient; but not if the Copy of the Anſwer be given before the Anſwer is ſworn.

The Defendant muſt anſwer before he can move, that the Plaintiff may make his Election, whether he will proceed here in the Court of Chancery, or at Law. And if in an Anſwer to a Bill to be relieved againſt an Action upon the Caſe at Law, the Defendant ſwears Money due, this Court will ſometimes order a Judgment to be given with a Releaſe of Errors, or the Injunction to be diſſolv'd. If the Defendant by Anſwer to a Bill to be relieved againſt the Penalty of a Bond, ſays that he doth not inſiſt upon the Penalty, but is ready to receive his Principal, Intereſt and Coſts, the Parties ſhall be forthwith ſent to a Maſter to examine what is due, *&c.* And a Defendant having, in two Anſwers, ſwore that he had no further Demand than ſo much, did without Notice ſwear a third Anſwer,

Anſwer, therein ſetting up another Bond: The Court order'd the Bond to be brought before a Maſter in Chancery, and that he ſhould examine whether the Defendant were duly ſworn to the ſaid Anſwers.

In an Anſwer to a Bill to redeem a Mortgage, the Defendant the Mortgagee ought not to alledge therein, that he is ready to receive his Money as the Court ſhall direct, for then the Court will not order him to receive it without a reaſonable Notice; but if he ſays generally, he is ready to receive his Money, the Court will order it to be paid immediately. If there be a full Anſwer given to the Thing in Demand, the Defendant is not bound to diſcover, 'till that be tried; and if it ſhould be otherways, a Defendant, on a feign'd Suggeſtion, might be forced to diſcover any Thing; but in ſuch Caſe, if the Matter be found againſt the Defendant, he ſhall after be examined on Interrogatories.

When the Defendant by his Anſwer upon Oath denies he hath any Right or Title to the Thing demanded by the Plaintiff's Bill, and diſclaims and renounces all Claim or Pretence of Title thereto; on this *Diſclaimer*, if it appear that the Bill was exhibited againſt the Defendant only for Vexation, the Defendant ſhall be diſmiſs'd with ſeven Nobles Coſts againſt the Plaintiff: But if the Plaintiff had any probable Cauſe or Reaſon to induce him to exhibit his Bill againſt ſuch Defendant, the Defendant on his Diſclaimer ſhall neither receive or pay Coſts; and the Plaintiff may, if he will, by Motion or Petition,

pray

pray a Decree againſt the Defendant, and all claiming under him, ſince the Time of the Bill exhibited, which is commonly granted without Coſts on either Side.

If one be named a Defendant in a Bill, among other material Defendants, who no Ways pretends any Right to the Matters in Queſtion, and he thereupon diſclaims, it ſhall be preſumed his Name was inſerted in the Bill without other Cauſe than only to take away his Teſtimony; and after the Diſclaimer upon a Motion to that Purpoſe, he may be uſed as a Witneſs in the Cauſe. Alſo where a Defendant diſclaims generally to all the Matters in the Bill, the Plaintiff is not to reply; if he doth, and ſerves the Defendant with a *Subpœna* to rejoin, the Defendant may have Coſts againſt him for the Vexation. Though if the Diſclaimer be to Part of the Matter only, and as to the other Part there is a Plea, *&c.* there may be a Replication to that Part which contains the Plea, and a Demurrer to the Reſt.

An *Anſwer in general* muſt 1ſt confeſs and avoid, or traverſe and deny all the material Points charged in the Bill by the Plaintiff. 2. It is to contain nothing ſcandalous or impertinent, under the like Penalty as ſuch Matter in a Bill. 3. It muſt be under ſome Counſel's Hand; but heretofore, when taken by Commiſſion on the Tenor of the Bill, it needed not, becauſe the Commiſſioners were then uſually Barriſters at Law. 4. It is to be upon Oath, except in the Caſe of Peers of the Realm; who have formerly ſometimes anſwered upon Oath, and ſometimes

times upon their Honour: But by an Order of the Houſe of Lords in 1640, the Lords of Parliament, and Widows and Dowagers of ſuch Temporal Lords, ſhall anſwer upon Proteſtation of Honour only; which is the preſent Uſage. 5. To a Matter charged as the Defendant's own Fact, if laid within ſeven Years before, the Anſwer ought to be without ſaying, *to his Remembrance*; or, *as he believes*; unleſs the Court upon Exceptions taken ſhall find Cauſe to diſpenſe with ſo poſitive an Anſwer. 6. And as to the Act of another, which the Defendant doth not certainly know, he muſt ſay, *he has heard and thinks*; or, *believes it to be true*; or, *that he doth not think or believe*, &c. and not mention only, *that he has heard.* 7. If the Defendant deny a Fact charged in the Bill, he is to traverſe it directly, not anſwer by Way of *Negative pregnant*; as where he is charged with the Receipt of a Sum of Money, he muſt traverſe and deny that he hath received that Sum, or any Part thereof; or ſet forth what Part he hath received, and deny the Reſidue. 8. A Fact being laid to be done with divers Circumſtances, the Defendant muſt not traverſe it literally as laid in the Bill, but anſwer and traverſe the Point of Subſtance poſitively and certainly. 9. A Defendant is not oblig'd to anſwer to any Matter, the Confeſſion whereof might ſubject him to any Penalty or Forfeiture at Law. 10. But Bills for Diſcovery of Writings and Evidences, *&c.* in pure Matters of *meum & tuum*, are to be anſwered. 11. A Counſellor, Clerk in Court, or Solicitor, are not compellable to anſwer what they

they know of their Client's Cauſe, as they are ſuch. 12. And ſo of a Referee, where it is agreed that what paſſes between them upon a Reference ſhall not be diſclos'd or made Uſe of on either Side. 13. An Anſwer ought not ordinarily to ſet forth Deeds *in hæc verba*; and tho' the Bill prays they may be ſet forth, yet if the Defendant in his Anſwer ſays, he is ready to let the Plaintiff have Copies of them, or if he ſets forth only Part of them, it will be well enough; and the Court will order, that the Plaintiff have Liberty at his own Charge to take Copies of them, without ſending them to a Maſter; or order the Defendant to produce them, on the Examination of Witneſſes, *&c.* *Ordin. Canc.* 121, 122, *&c.*

In an Anſwer, a Purchaſer for a valuable Conſideration need not ſet forth any Deeds or Writings, but thoſe by and under which he more immediately claims: Nor is it required in his Anſwer or Plea, to ſet out the Conveyances at large, or the Sums or Dates; but only in general to ſay, by good and ſufficient Conveyances in Law, or ſuch and ſuch Deeds in particular, made and granted for a valuable Conſideration in Money paid. When the Defendant hath anſwered the Plaintiff's Bill, the Plaintiffs and Counſel are ſeriouſly to adviſe upon it; and if they find that upon the Anſwer alone, without further Proof, there be ſufficient Ground for a final Order or Decree, they ſhall proceed upon the Anſwer, without further lengthening of the Cauſe: Or if it be requiſite to prove one or a few particular Points, ſhall reply unto thoſe Points; and not

not draw into Pleading or Proceſs any more than thoſe neceſſary Points, thereby making long Books, and putting both Sides to unneceſſary Charges, the Defaulters wherein are to be puniſhed by paying the Charge of the Copies and otherwiſe as the Cauſe ſhall require. *Ordin. ibid.*

The Defendant may without Notice, move to amend his Anſwer in a ſmall Matter; but if it be in a material Point, he muſt give Notice of the Motion for ſuch Amendment to the Plaintiff's Clerk or Solicitor; and tho' it is in a material Point, the Court often grants it on Affidavit made that the Defendant was ſurprized therein, *&c.* 'Tis ſaid an Anſwer ought not to be amended after Iſſue joined; tho' it has been ſometimes done. An Anſwer being reported ſcandalous, the Court muſt be moved by the Defendant, that ſuch Part of it may be expunged, on his Payment of Coſts; and the Court will not allow it to be expunged 'till the Coſts are certified to be paid. On a firſt Anſwer reported inſufficient, the Defendant pays 40 *s.* Coſts; on the ſecond Anſwer inſufficient 3 *l.* on the third 4 *l. &c.*

Anſwers in Chancery taken in Town are ſworn before a Maſter of Chancery; and if the Defendant lives above 20 Miles from *London*, they are taken and ſworn by Commiſſioners in the Country, empowered by Virtue of a *Dedimus Poteſtatem*. Alſo there may be a ſpecial *Commiſſion* to take an *Anſwer*, *Plea*, and *Demurrer*, on moving the Court; and as many Times the Defendant is not prepared to put in

his Plea, or Demurrer, or that there is Occaſion to plead or demur, as well as to anſwer, he is forced to move the Court accordingly for a ſpecial *Dedimus* to anſwer, plead and demur.

But the Commiſſioners, upon an ordinary *Dedimus*, or Commiſſion, have Power to return nothing but an Anſwer; and if a Plea or Demurrer only be return'd, it will be filed as if it came in without Commiſſion, tho' at the Defendant's Peril of paying five Marks Coſts, *&c.* This Court will not grant a Commiſſion to Demur only, becauſe the Defendant may do that under Counſel's Hand, without delivering the ſame in Perſon, and without Oath; which he is to do in convenient Time; and he ſhall not be excuſed from ſo doing by a Commiſſion to the needleſs Charge and Delay of the Plaintiff: And therefore if the Defendant ſhall pray a *Dedimus*, and thereby return only a Demurrer, or ſuch Plea as ſhall be afterwards over-ruled, he ſhall pay Coſts as aforeſaid, and the Demurrer be rejected; and tho' the Plea ſhall be allow'd, the Defendant ſhall have no Coſts from the Plaintiff, in reſpect of his unneceſſary Trouble and Charge occaſion'd by ſuch Commiſſion. If a Defendant on a Commiſſion to anſwer, put in only a Demurrer, it is ſaid Attachment may be awarded againſt him.

Yet if a Defendant having a Commiſſion to anſwer, only tenders a Demurrer to the Commiſſioners, and refuſes to anſwer upon Oath, they are to return ſuch his Refuſal, and the Reaſon thereof, together with the Demurrer, and leave the ſame to the Conſideration of the Court.

And

And by the Orders of the Court of Chancery, where the Defendant is served with a *Subpœna* to answer, and obtaineth a Commission to answer in the Country, it is said he shall without more Words have the same Liberty to answer, plead and demur, as he had by the original Process if he could have appeared in Person. Tho' if the Defendant doth demur, or plead, and do not put in his Demurrer or Plea, into the Paper of Pleas and Demurrers in the Register's Office, within eight Days after the same is delivered into Court, that so the said Demurrer may be argued before the Lord Chancellor, *&c.* If this is omitted to be done, the Plea and Demurrer is over-ruled of Course; and the Plaintiff may take forth a *Subpœna* against the Defendant to enforce him to make a better Answer, and an Order for Costs. *Ord. Canc.* 117, 118.

These *Dedimus's* or *Commissions*, either to take an Answer, or an Answer, Plea, and Demurrer, were formerly granted upon Supposal of the Defendant's Inability to travel, by reason of Sickness, Age, or Infirmity; or in Cases of Noblemen, Corporations, or the like; and were not to be granted, but upon Affidavit made of Sickness, Impotency, *&c.* or other good Cause shewn: But as the Business of the Court encreased, it became a Thing of Course; and where a Defendant liveth twenty Miles from *London*, he has of Course a *Dedimus Potest.* to take his Answer, *&c.*

Antiently, the *Tenor* of the *Bill* in Chancery was enclosed in or annex'd to the *Dedimus*,

that so the Commissioners might examine the Defendants thereupon, and take their Answer thereto; and the Plaintiff's Commissioners might refuse to join in executing the Commission, except they might read, or hear read the Bill or Tenor thereof, as also the Defendant's Answer, in the Presence of the Defendant: Tho' in Process of Time, Commissioners of mean Quality, and often of no great Knowledge or Probity, were made Use of; and the Plaintiff's Commissioners being willing to have as little Trouble as might be for their Fees, the Reading of the Tenor of the Bill, or the Answer of the Defendant to it, became altogether neglected; and at length the Commissioners did nothing but ask the Defendant, if he had read or heard read his Answer, and he answering in the Affirmative, they swore him, and so the Business was dispatched in an Instant. The Six Clerks in the Chancery perceiving no Use to be made of the Tenor of the Bil, set any of their young Clerks to abridge the Bill, without examining what they did therein; and so this Tenor of the Bill sent with the Commission, became by Degrees a meer Trifle, for which however the Six Clerks charged 8*d.* *per* Sheet, which, since Bills have been excessively lengthen'd, amounted to a round Sum: This being observed in Parliament to be a great and needless Expence, as Matters then stood, by the Statute 4 & 5 *Ann. c.* 16. *for Amendment of the Law*, 'tis Enacted, that no Copy, Abstract, or Tenor of any Bill in Equity, shall go with the *Dedimus* or Commission; but in lieu of it the sworn Clerks in Chancery are to

to take to their own Use the Termly Fee of 3*s.* 4*d.* and also the whole Fee or Fees for all small Writs: And thus the Tenor of the Bill, and the Charges thereof ceased.

When a Defendant is minded to take out a *Dedimus*, Commissioners Names may be struck as is usual upon a Commission to *examine Witnesses*: But the Defendant's Clerk in Court doth commonly no more than call upon the Plaintiff's Clerk for the Names of two Commissioners, and puts them into the Commission with two of his own or the Defendant's Nomination. And this Practice arose, when the Commissioners examining the Defendant grew into Disuse as aforesaid, their Business now being only to see the Defendant swear his Answer; also the Striking these Commissioners is at this Time usually done by the Six Clerks of Course.

As in Commissions to examine Witnesses, and to prove Contempts, and other special Commissions directed by the Court; so in a joint Commission to take an Answer, the Commissioners agreed upon are to be entered in a Book kept by the Six Clerk on the other Side, and subscribed unto by each Six Clerk in the Cause, or in their Absence by their Deputies, so that no Alteration may be made in the Commissioners Names but by Order. And if the Plaintiff refuse to strike Names, and to join in Commission, the Court may upon a Motion for that Purpose order him to join in four Days, or some other short Time; and on Failure, the Defendant shall have a Commission *ex parte*.

If one of the Commiſſioners named dies, the Clerks muſt name two more anew, and one of them is to be ſtruck by the adverſe Clerk, and the Court is to be moved for a new Commiſſion, *viz.* that the new Commiſſioner be added to the others that are living. An Attachment, *&c.* which had iſſued for not returning the Commiſſion and Defendant's Anſwer, was diſcharged, paying the ordinary Fees; becauſe one of the Plaintiff's Commiſſioners, refuſed to join with one of the Defendant's to take the Anſwer; and a new Commiſſion was granted to indifferent Commiſſioners, named by the Defendant or Court. If the Party who has the Carriage, refuſe to execute the Commiſſion, the Court will grant a new one to the adverſe Party, and give him the Carriage of it: And where by Accident the *Dedimus* is loſt, this Court will grant a new Commiſſion.

But after a Commiſſion once obtained to anſwer, no ſecond Commiſſion ſhall be granted without ſpecial Order of Court, upon good Reaſon ſhewed to induce the ſame, or on the Plaintiff and Defendant's joint Conſent. And if by the Fault of him who has the carrying of the firſt Commiſſion, the other Party is put to unneceſſary Charges, the Court will order a Maſter to tax Coſts; and on Cauſe ſhewn, order the Party in Default to give Security to pay them before he ſhall have a ſecond Commiſſion; and having the Carriage of the ſecond Commiſſion, he is to pay the Coſts upon it alſo, if he fails therein again.

There

There muſt regularly be Six Days Notice, excluſive of the Day of executing the Commiſſion, given to the Plaintiff of the Time of Execution thereof, or to ſome Perſon named to that Purpoſe in the Label of the *Dedimus*, which generally is the Solicitor in the Country; but by a particular Clauſe in the Commiſſion, to be had on Motion of the other Side, ten or twelve Days Notice of executing it, may be ordered to be given: And if the Party that has the Carriage thereof, gives Notice of executing it, but does neither countermand the Notice in due Time, (*viz.* in three or four Days before, as the Diſtance of the Place, *&c.* may require) nor executes it at the Time, the Court on Motion will order Coſts to be taxed for the other Party's Attendance.

On a Motion to ſuppreſs an Anſwer, for that one of the Commiſſioners that took it was an Attorney's Clerk under Age; the Court ſaid if he be old enough to take an Oath, he is old enough to receive an Anſwer. (This was ſince the Uſage of examining the Party on the Tenor of the Bill; ſo that the Court hath not that Regard to the Ability and Capacity of ſuch Commiſſioners as formerly.) Notice being given by the Defendant of executing a Commiſſion, the Plaintiff's Commiſſioners attended at the Day and Place from Nine a Clock in the Morning 'till Twelve, and from One a Clock in the Afternoon 'till three, and the Defendant's Commiſſioners came not; but afterwards the Anſwer was taken and ſworn the ſame Day, and therefore the Plaintiff moved that the Anſwer might

be suppressed; tho' the Court refus'd it, saying his Commissioners should have stayed 'till Six a Clock.

A Commission to take an Answer being executed is to be return'd, *i. e.* brought into Court and delivered to the Six Clerk or his Deputy, by some of the Commissioners therein named; or he that brings it is to make *Oath* before a Master in Chancery, *that it hath not been opened or altered, &c.* And *Dedimus's* ought strictly to be return'd by the Day after the first Costs-Day of the Term next after the Issuing thereof; except of Trinity-Term, and then by the second Costs-Day: But in Regard Country Attornies, *&c.* by whom Commissions are sent, generally come pretty late to Town in Term, the Clerk on the other Side will stay some Time; or the Court on Motion may enlarge the Time for doing thereof.

The *Forms* of *Dedimus's* or *Commissions* to take Answers in Chancery, and the particular *Proceedings* of the *Commissioners* thereon, are as follows, *viz.*

An ordinary *Dedimus Potestatem* to take an *Answer.*

GEorgius, *&c. Dilectis nobis* A.B. C.D. E. F. *&c. Salutem. Cum* G.H. *Quer. quandam Petitionem sive Billam Anglicanam coram nobis in Canc. nostr. vers.* J. K. *Defendentem nuper exhibuit, quodque eidem Defendenti per Breve nostrum nup. præcepimus quod esset coram nobis in dicta Canc. nostr. ad certum diem jam*

jam præterit. Petitioni prædict. Responsur. Sciatis quod nos de fidelitatibus Industr. & providis Circumspectionibus vestris in negotiis nostris agend. plurimum confidentes assignavimus vos, & vobis ac duobus aut pluribus vestrum plenam potestatem & authoritatem damus & committimus per præsentes ad ipsum J. K. *Defendentem de & super materiâ in Petitione sive Bill. Anglican. prædict' content' diligenter examinand. & respons. suam super eandem recipiend. & in Script' in Pergameno redigend. ac ideo vobis mandamus quod ad cert. Diem & Locum, sive ad cert. dies & Loca quos vel quæ ad hoc provideritis, aut duo sive plur. vestrum providerint, circa premissa intendatis aut duo sive plur. vestrum intendant, ita quod præfat. Def. de & super Materiâ in Petition. sive Bill. prædict. specificat. super Sacrament. suum coram vobis aut duobus sive plur. vestrum per Sacrosancta Dei Evangel. corporaliter præstand. diligenter examinetis, aut duo sive plur. vestr. Examinent, & quod respons. suam superinde recipiatis & in Scriptis in Pergameno redigatis, Et cum ill. sic ceperitis eam nobis in Canc. nostra* (tali Retorn.) *ubicunque tunc fuer. sub sigillis vestris aut duor. sive plur. vestrum clauſ. mittatis, aut duo sive plur. vestr. mittant, & hoc Breve.* Teste, *&c.*

A *Dedimus* or *Commission* to take the *Answer of a Nobleman.*

GEorgius, *&c. Dilectis nobis, &c. Cum* G. H. *& al. Querentes quandam Petition. sive Billam*

Billam coram nobis in Cur. Canc. noſtræ verſ. prænobilem T. *Dominum* B. *Defendent. nup. exhibuerunt, Sciatis quod nos de fidelitate & providis circumſpectionibus veſtris plurim. confidentes aſſignavimus vos, ac tenore præſent. damus vobis tribus vel duobus veſtr. poteſtat. & Authoritat. ipſum Def. de & ſuper materiam Petitioniꝭ præd. diligent. examinand. Et ideo vobis tribus vel duobus veſtrum Mandamus, quód ad certos Diem & Locum quos ad hoc provideritis ad præfat. Def. accedatis ac ipſum de & ſuper Materiam petitionis præd. atteſtan. ſuper Honorem ſuum coram vobis tribus vel duobus veſtrum adtunc viſis per ipſum Sacroſanctis Dei Evangeliis Reſponſionemque ſuam eidem Petitioni fiend. recipiatis in Scriptis & in Pergameno redigatis, & cum ill. ſic ceperitis eam nobis in dict. Cancel. noſtra, &c.*

A *Dedimus* to take an *impotent Perſon's Anſwer.*

GEorgius, *&c. Dilectis, &c. Cum* G. H. *Quer. &c. Quodque eidem* J. K. *Defenden. &c. ac idem* J. K. *adeo impotens ſui exiſtit quod uſque Cur. Canc. noſtr. præd. ad diem illum ad Reſponſionem ſuam eidem Petitioni fiend. abſq; corporis ſui periculo laborare non poſſit; nos ſtatum ejuſdem* J. *in hac parte compatientes & de fidelitate & providis circumſpectionibus veſtris plurim. confidentes, aſſignamus vos, &c.*

FH
MVSEVM
BRITANNICVM

Notice

Notice *of Executing a* Commission to answer.

'WE whose Names are subscribed having 'received a Commission issuing out of 'the High Court of Chancery, to us and others 'directed, to take the Answer of *J. K.* Defen-'dant, to the Bill of Complaint of *G. H. &c.* 'Gent. Complainants; now we do hereby give 'you Notice, That we intend to execute the 'said Commission on Monday the 16th Day of, '*&c.* at the House of, *&c.* at which Time and 'Place you, with your Commissioners, may be 'present if you please. Given under our Hands 'this Day and Year, *&c.*'

To Mr. *J. K.*

A. B.
C. D. &c.

When the Commissioners and Parties are met together for executing the Commission, the Commissioners read over the Answer to the Defendant; and then say to him, You have heard the Answer read, and do exhibit it as your Answer to the Bill of Complaint of *G. H. &c.* to which he replies Yes? Then the Commissioners administer the Oath to the Party.

Oath *of the Defendant on* taking an Answer.

'YOU shall swear, that what is contained 'in this your Answer, as concerns your 'own Act and Deed is true; and that what re-'lates to the Act and Deed of any other Person 'you

'you believe to be true; and that what is there-
'in denied is not true, in ſuch Manner as there-
'in is ſet forth.

So help you God.

And the Anſwer being taken, is to be annexed to the Commiſſion; and then the *Caption* is to be made at the Foot of the Anſwer in Court-Hand, thus:

Capt. fuit hæc Reſponſ. ſuper Sacram. ſupranominat. Def. Johannis K. *ſexto die* Maii, *Anno Duodecimo* Georgii *Regis*, Magn. Britan. *&c. Annoq; Dom.* 1726. *apud, &c. coram nobis,*

A. B.
C. D. } *Commiſſioners.*

The Caption thus ſubſcribed, on the Commiſſion about the Middle thereof, is endorſed the Execution in this Manner:

Executio iſtius Com. patet in quadm. Schedul. huic Com. annex.

Reſponſ.

A. B.
C. D. *&c.* } *Com'.*

If there be Schedules, annex them all to the Anſwer and Commiſſion; and then the Commiſſion is to be made up and ſealed, and directed to

to your Clerk in Chancery: And the Perſon that carries it, muſt make Affidavit on the Back of the Anſwer, 'That he received the Anſwer from 'A. B. &c. one of the Commiſſioners by whom 'the Anſwer was taken, and that the ſame is no 'Way altered ſince it has been in his Cuſtody.'

The uſual Fee of the Commiſſioners for executing this Commiſſion is 6*s.* 8*d.* a-piece.

If the Commiſſioners are to take an *Anſwer*, *Plea*, and *Demurrer*, of the Defendant, the Caption may then be made according to the following Precedent:

Hæc Reſponſio, *& hoc* Placitum *Capt. fuer. per Sacram. Defendentis ſuper Sacroſancta Dei Evangelia, Et hæc* Moratio *dict. Defenden. Capt. fuit ſine Sacram. apud, &c. in Com. &c. ſexto die* Maii, *Anno Regn. Dom.* Georgii *nunc* Magn. Britan. *Reg. Duodecimo, Coram nob. Commiſſionar. virtut. Comicon. dict. Dom. Regis nobis & al. direct'.*

A. B.
C. D.

An Anſwer in Chancery to a Bill brought in Behalf of an Infant to yield Accounts, *&c.*

The Anſwer of C. D. *Defendant to the Bill of Complaint of* A. B. *Complainant.*

THIS Defendant now, and at all Times hereafter, ſaving and reſerving to himſelf all

all Manner of Benefit and Advantage of Exception to the many Incertainties, Inſufficiencies and Imperfections in the ſaid Complainant's Bill of Complaint contained, for Anſwer thereunto, or ſo much thereof as he, this Defendant, is adviſed is any Ways material for him to make Anſwer unto, he anſwereth and ſaith, That he believes it to be true, that *T. B.* the Complainant's Father in the Bill named, was in his Life-time, and at the Time of his Death, poſſeſſed and intereſted of and in a very conſiderable Eſtate, but of what certain Value, or the Particulars thereof, this Defendant knoweth not, nor can ſet forth; and that at the ſame Time, for the Purpoſe mentioned in the Bill, the ſaid *T. B.* did make his Laſt Will and Teſtament in Writing, as in and by the ſaid Bill is ſet forth, or to that Effect, ſave that by the ſaid Will, he the ſaid *T. B.* did order and declare, that, *&c.* and not as the Bill ſuggeſts; and farther in and by the ſaid Will he did deſire and appoint that his Executors ſhould twice yearly meet with his Overſeers, and make up and perfect a plain and full Account and Manifeſtation in Writing, to and with the ſaid Overſeers, of, for, and concerning all ſuch Money, Debts, Payments, Receipts, Diſburſements, and other Things touching his Eſtate, or any Way relating to the Execution of his Will, fit and needful to be inſerted therein, a Copy of every of which Accounts to be fairly written and ſubſcribed by his Executors, and delivered to his Overſeers, to the Intent in the ſaid Bill mentioned; and of the ſaid Will made this Defendant and *J. B.*

Executors, *&c.* as by the ſaid Will, proved in the Prerogative Court of *Canterbury*, more at large appears, and to which this Defendant for more Certainty referreth himſelf; and this Defendant farther ſaith, That he, together with the ſaid *J. B.* and, *&c.* did prove the ſaid Will in due Form of Law, as he, this Defendant, was adviſed to do, and jointly took upon them the Execution thereof, but that the ſaid *J. B.* was the chief acting Executor, and took upon him the ſole Management of the ſaid *T. B.*'s perſonal Eſtate; for this Defendant ſaith, that neither he, nor any for him, ever poſſeſſed himſelf of any Part of the Eſtate of the ſaid Teſtator *T. B.* other than to receive the Rents and Profits of, *&c.* a great Part whereof he expended about, *&c.* and other Part thereof in, *&c.* And this Defendant ſaith, according to the Direction of the Will, he did ſeveral Times make up his Accounts in Writing, and deliver them to the Overſeers of the ſaid Will; and which Accounts ſo delivered by this Defendant, he avers were juſt and true Accounts of all his Actings and Dealings, and of all his Receipts and Payments, with or in Relation to the Perſonal or other Eſtate of the ſaid *T. B.* But this Defendant having no Copies of ſuch Accounts, he cannot now ſet forth the Particulars thereof, but refers himſelf to them when they ſhall be produced, being, as this Defendant believes, in the Hands of the ſaid Overſeers, or ſome of them, where the Complainant may have Acceſs to, or Copies of them; and this Defendant cannot give the Complainant any further Account touching

the

the ſaid Executorſhip, other than the Accounts delivered in to the ſaid Overſeers, as aforeſaid, and as herein after is ſet forth, *viz.* That to the laſt Account which this Defendant made up and delivered to the ſaid Overſeers, ending the Day, *&c.* he, this Defendant, annexed a Schedule of all his Receipts and Diſburſements, and hath alſo annexed a Schedule of his Receipts and Payments ſince that Time to this his Anſwer, which Schedule this Defendant prays may be taken as Part of his Anſwer; and he avers the ſame to be true, and contains a true and perfect Account of all ſuch Money as he, or any for him, or to his Uſe, ſince the Time aforeſaid, have, or hath had, raiſed or received out of the Eſtate of the ſaid *T. B.* and of what Money this Defendant hath ſince that Time paid or diſburſed, as he was one of the Executors of the ſaid *T. B.* And farther or other Account or Anſwer touching the intermedling in the ſaid Executorſhip, or of his Receipts or Payments, he this Defendant cannot give, than as aforeſaid; and this Defendant denies that he ever took any Gratuity to lend any Part of the Monies belonging to the ſaid *T. B.*'s Eſtate, either upon good or bad Security, nor did this Defendant ever conſent to the Lending any Sum of Money, Part of the ſaid Eſtate, upon a Security to any Perſon or Perſons that he believed or ſuppoſed to be otherwiſe than good; and this Defendant denies that he ever put out any Money, or had any Money to put out, of, or belonging to the ſaid Eſtate, other than ſuch as he hath charged himſelf with in the ſaid Accounts, but ſays it is

true, that, &c. And this Defendant denies he lent out the ſaid Sums, &c. which Debts this Defendant doth fear may ſince become deſperate, for that the ſaid, &c. hath abſconded himſelf, and as this Defendant hath heard is become inſolvent; and this Defendant conceives he is unconcern'd therein, he having no ſhare in lending the ſaid Money, but the ſaid *J. B.* who chiefly managed the ſaid *T. B.*'s Perſonal Eſtate lent and paid the ſaid Money to the ſaid, &c. And this Defendant denies he ever threatned or intended to take, &c. as untruly ſuggeſted by the ſaid Complainant, but on the contrary is, and always was willing to conſent to, &c. And this Defendant farther ſaith, That he believeth it to be true, that the ſaid *J. B.* about the Time mentioned in the Bill, made his Laſt Will and Teſtament, &c. and thereof made this Defendant and, &c. Executors; and he alſo ſaith it may be true, that the ſaid *J. B.* died poſſeſſed and ſeiſed of a conſiderable Perſonal and Real Eſtate, but that this Defendant never poſſeſſed himſelf of any Part thereof, or intermeddled therewith, or in the ſaid Executorſhip, &c. And this Defendant denies that he ever, to his Remembrance, borrowed any Money of the ſaid *J. B.* and ſure he is, that he was not in any Sort indebted to the ſaid *J. B.* at the Time of his Death; and this Defendant denies all Combination charged in the Bill, either with the ſaid, &c. or any other Perſon or Perſons whatſoever, to wrong or injure the Plaintiff, and ſaith, that if any Loſs happened on the Miſmanagement of the Eſtate of the ſaid *T. B.* the ſame was occaſioned

caſioned or happened ſo to be by the ſaid *J. B.* and not this Defendant; and the ſaid *J. B.* hath, as this Defendant believes, by his Will and the Bequeſts therein, fully reprized the Complainant for all Loſſes or Damages: *Without that*, that any other Matter or Thing in the Complainant's ſaid Bill of Complaint contained material or effectual for this Defendant to make Anſwer unto, and not herein and hereby ſufficiently anſwer'd, confeſſed or avoided, traverſed or denied, is true to the Knowledge and Belief of this Defendant; all which Matters and Things this Defendant is ready to aver and prove as this Honourable Court ſhall award, and humbly prays to be hence diſmiſſed with his reaſonable Coſts and Charges in this Behalf wrongfully ſuſtained.

An Anſwer to a Bill to produce and diſcover Writings.

The Anſwer of R. T. *Defendant to the Bill of Complaint of* B. Y. *Gent. Complainant.*

THE ſaid Defendant ſaving to himſelf all Manner of Benefit and Advantage of Exception to the many Incertainties, Inſufficiencies, and Imperfections in the ſaid Complainant's Bill of Complaint contained; for Anſwer thereunto, or unto ſo much thereof as this Defendant is adviſed is any Ways material for him to make Anſwer unto, he anſwereth and ſaith, That *D. T.* named in the Complainant's ſaid Bill, was poſſeſſed for divers Years yet to come of the ſaid Meſſuage or Tenement, Lands and Premiſſes in the

the ſaid Bill mentioned, by Virtue of a Leaſe thereof made by, *&c.* in the ſaid Bill named unto the ſaid *D. T.* long before, *&c.* mentioned in the ſaid Bill of Complaint; and the ſaid *D. T.* ſo being thereof poſſeſſed, had, on or about, *&c.* in ſuch Manner as in the ſaid Complainant's Bill is ſuppos'd, made a lawful Demiſe of the ſaid Meſſuage and Lands unto the ſaid Defendant for divers Years to come, upon which Leaſe the ſaid *D. T.* reſerved a yearly Rent of, *&c.* to be paid during the Continuance of the ſaid Leaſe, by Force of which Leaſe the Defendant entered into the ſaid Lands and Premiſſes, and was and is yet lawfully poſſeſſed thereof accordingly, and ever ſince hath and ſtill doth enjoy the ſame by Virtue of the ſaid Leaſe and Demiſe, and is thereby to have and enjoy the ſame during the Continuance of the ſaid Leaſe, of which there are at this Time about, *&c.* Years to come and unexpired, and ſaith that the Plaintiff is a Perſon altogether unknown to this Defendant, being one this Defendant never had any Dealings or Correſpondence with, and therefore this Defendant cannot but admire at this Suit commenced by the ſaid Complainant againſt this Defendant touching the Premiſſes; and this Defendant ſaith, that the ſaid *D. T.* after the ſaid Leaſe and Demiſe ſo made to the ſaid Defendant of the ſaid Lands as aforeſaid, and before the ſuppoſed, *&c.* made a Grant and Aſſignment of the Intereſt of him the ſaid *D. T.* of and in the ſaid Lands which this Defendant hath and occupieth by Virtue of the Leaſe above-mentioned, for divers Years yet to come and

unexpired, as aforeſaid, unto *L. E.* of, *&c.* unto which Grant and Aſſignment the ſaid Defendant was privy, and therefore this Defendant humbly conceives and is adviſed, that he, this Defendant, is for the Payment of his Rent chargeable, and ought by the Law to pay the Rent reſerved unto the ſaid *L. E.* and not the ſaid Complainant, which ſaid *L. E.* this Defendant doth verily think is the lawful Landlord, during the ſaid Term of Years yet to come, and not the Complainant who is wholly a Stranger to this Defendant; and alſo ſaith, That the ſaid Complainant never at any Time heretofore demanded any Rent for the ſaid Meſſuage or Tenement, and Lands that this Defendant hath and occupieth by Virtue of the ſaid Leaſe for Years; and ſaith, That he, this Defendant, is ſued by, *&c.* in the ſaid Bill of Complaint named in his Majeſty's Court of Common Pleas, in an Action of Debt brought by him againſt the ſaid Defendant; and therefore the ſaid Defendant is the more ſurprized at this Suit brought againſt him by the ſaid Complainant touching the Premiſſes, whereby this Defendant is wrongfully vexed and ſued without any juſt Cauſe, without that there is any ſuch Bargain and Sale made by, *&c.* as in the ſaid Bill is ſet forth, or that the ſaid, *&c.* bargained and ſold the Premiſſes to the Complainant, or that the ſaid Complainant ought to have and enjoy the ſaid Premiſſes to the Knowledge of this Defendant, and this Defendant denies all Combination in the Bill charged; *without that*, that there is any other Matter or Thing in the Complainant's ſaid Bill

Bill of Complaint contained material or effectual for this Defendant to make Anſwer unto, and not herein and hereby ſufficiently anſwered, *&c.* All which Matters and Things this Defendant is ready to aver and prove, *&c.* and humbly prays to be hence diſmiſs'd, *&c.*

An Anſwer to a Bill that charged the Defendant with ſetting up a falſe and fraudulent Will.

The Anſwer of P. H. *Defendant to the Bill of Complaint of* G. E. *Complainant.*

THIS Defendant, ſaving and reſerving to her ſelf all and all Manner of Benefit and Advantage of Exception to, *&c.* in the Complainant's Bill of Complaint contained; for Anſwer thereunto, or unto ſo much thereof as this Defendant is adviſed is any Ways material for her, this Defendant, to make Anſwer unto, ſhe anſwereth and ſaith, That ſhe, this Defendant, doth not know what Perſonal Eſtate *J. J.* in the Complainant's ſaid Bill of Complaint mentioned was at the Time of his Death poſſeſs'd of, but believes he did make his Will in Writing, and thereof *R. J.* his then Wife Executrix, to whom he alſo deviſed the Sum of 2000 *l.* but without any Direction for her to diſpoſe of the ſame among her Relations, and that he died on or about, *&c.* And this Defendant likewiſe believeth, That ſoon after his Death the ſaid *R. J.* proved the ſaid Will, and took upon her the Execution thereof, and poſſeſſed her ſelf of ſo much

much of his Perſonal Eſtate as ſhe could diſcover and come at, ſufficient to pay all his juſt Debts and Legacies; but this Defendant doth not know what Improvement the ſaid *R. J.* made of the Eſtate left by the ſaid *J. J.* and believes ſhe made no Improvement thereof; and this Defendant further ſaith, That ſome Time after the Death of the ſaid *J. J.* ſhe the ſaid *R. J.* being in Diſcourſe with the Defendant about making her Will, ſhe then told this Defendant, that ſhe would make this Defendant her Executrix, and ſhe the ſaid *R. J.* at the ſame Time, and ſeveral Times before, expreſſing a very great Kindneſs and Affection for this Defendant, ſhe the ſaid *R. J.* having bred up this Defendant from a Child, and this Defendant having all along lived in the Houſe with her, and looked unto and taken Care of her the ſaid *R. J.* But this Defendant being at that Time ignorant of the Nature of an Executorſhip, and fearing ſhe ſhould come into trouble thereby, deſired the ſaid *R. J.* not to make this Defendant Executrix, but to make ſome of her Relations Executors, for which the ſaid *R. J.* then blamed this Defendant, ſaying, ſhe had no nearer Relations, and that ſhe deſign'd to take Care of and do very well for this Defendant, and often uſed Words to that Effect; but this Defendant being inform'd, that the Complainant was ſome Way related to the ſaid *R.* ſhe, this Defendant, did deſire the ſaid *R. J.* to ſend for the Complainant, and at the Defendant's Requeſt the ſaid *R. J.* did ſend to the Complainant to deſire him to come to the ſaid *R.* and the ſaid Com-

plainant

plainant thereupon came accordingly, tho' what particular Diſcourſe paſſed between them this Defendant knows not; and this Defendant ſaith, That at the Time the ſaid Complainant ſo came to the ſaid *R. J.* he brought another Perſon with him, and this Defendant believes it may be true, that the ſaid *R.* did then give ſome Inſtructions touching the making of her Will, but what ſuch Inſtructions were, this Defendant doth not know, nor doth this Defendant know that the ſaid *R. J.* then gave the Complainant any Account of what Money ſhe had by her in the Houſe, nor did ſhe deſire him to tell over the ſame to the Knowledge of this Defendant, but this Defendant believes the ſaid *R.* did then give the Complainant an old Watch, and ſome Pieces of old Money, *&c.* And this Defendant alſo believes, that the ſaid Complainant did at that Time go away, and about nine a-Clock at Night on the ſame Day returned again, and brought a Draught of a Will wherein he was named Executor, which being read over to the ſaid *R.* ſhe did not approve thereof, but ſaid there ſhould be ſeveral Alterations made therein, and that ſhe had forgotten ſome Perſons ſhe intended to give Legacies unto, and ſo the ſaid Draught of the ſaid Will was left in the ſaid *R. J.*'s Room never executed, but ſoon after the ſaid *R. J.* burnt it with her own Hands, and within ten Days after ſhe the ſaid *R.* cauſed another Will to be made, and thereof conſtituted and appointed this Defendant ſole Executrix, and thereby gave the Complainant a Legacy of, *&c.* But the ſaid *R. J.* having afterwards taken

ſome Diſpleaſure at the Complainant, and being willing to alter her Will, ſhe the ſaid *R.* about, *&c.* did cauſe another Will to be drawn, which ſhe voluntarily made and executed, and declared to be her Laſt Will and Teſtament, in theſe Words, *viz. In the Name of God, Amen,* &c. (here ſet forth the Will, with the Clauſe of making the Defendant Executrix, *&c.*) as in and by the Probate of the ſaid Will under Seal of the Prerogative Court of *Canterbury*, now in the Defendant's Cuſtody, and to which ſhe, this Defendant, refers her ſelf, doth, and may appear; and this Defendant ſaith, That ſome Time after the making of the ſaid laſt mentioned Will, on or about the Day, *&c.* ſhe the ſaid *R. J.* departed this Life, ſoon after whoſe Death this Defendant took the uſual Oath in order to the Proving of the ſaid Will, *&c.* And the ſaid Defendant ſaith, the Occaſion of Proving the ſaid Will ſo ſoon after the ſaid *R.*'s Deceaſe was, becauſe by her Will ſhe had directed One hundred Pounds to be expended on her Funeral; and this Defendant was adviſed ſhe could not ſafely Act therein 'till ſhe had proved the ſaid Will, and it was not out of any evil Deſign; and there was no Occaſion that ſhe knows of Entring any Caveat againſt the Probate of the ſaid Will; however, a Caveat was entred by, *&c.* who, upon producing the ſaid Will, and the Teſtimony there was of it, did withdraw the ſaid Caveat; and this Defendant is adviſed ſhe was not obliged, nor had ſhe any Reaſon to give Notice to the Complainant, or to any other Perſon, of her Proving the ſaid Will; and

ſaith, that ſhe having duly proved the ſaid Will, ſhe, this Defendant, by Virtue thereof, is well entitled unto, and hath poſſeſſed her ſelf of ſo much as ſhe could of the Perſonal Eſtate of the ſaid *R. J.* and intends fully to perform the ſaid Will, and confeſſeth that there is Aſſets ſufficient to pay and ſatisfy all the ſaid *R.*'s juſt Debts and Legacies; and this Defendant is ready and willing to pay unto the Complainant the Legacy given to him by the ſaid Will; and this Defendant hath already given unto the Complainant Mourning, which he ſeemed to accept of kindly from this Defendant, and he did not then pretend to Queſtion the Validity of the ſaid Will; and this Defendant denieth, That the Draught of the Will which the Complainant prepared for the ſaid *R. J.* to ſeal, was left with this Defendant, nor did this Defendant undertake to get the ſame executed by the ſaid *R.* nor did this Defendant get and keep the Draught of the ſaid Will, or ſend for any of her the Defendant's Relations to come and ſtay with her in the Houſe of the ſaid *R. J.* nor did they, or this Defendant, hinder the Complainant from ſeeing the ſaid *R.* when he came to her Houſe to ſee her, *&c.* Nor doth this Defendant remember that the Complainant came above twice to ſee her after he had left the aforeſaid Draught, at one of which Times he demanded the Sum of, *&c.* for making the ſaid Draught and Charges, and ſaith, that altho' the ſaid Complainant was a Relation of the ſaid *R. J.*'s yet he was a very remote one, being but, *&c.* and one the ſaid *R.* had no Correſpondence with,

nor

nor as this Defendant believes, had ſo much as ſeen, for above twenty Years before he was brought to the ſaid *R.* by this Defendant's Means, as aforeſaid: And after ſhe was better acquainted with him (which was likewiſe by the Means of this Defendant) ſhe repented ſhe had ever ſent for him, but having paid him the Charges he had been at about getting the Draught of the Will as aforeſaid, ſhe the ſaid *R. J.* did burn the ſame, and then purſued her former Intentions of making this Defendant her Executrix, which ſhe did by her Will deliberately made and publiſhed above ten Months before her Death, as aforeſaid; and the making this Defendant her Executrix was no more than what ſhe had long and lately before declared ſhe intended, this Defendant having been many Years, *&c.* and one who the ſaid *R. J.* and her Husband often ſaid, did help to get the Eſtate they had, and for that this Defendant hath been very ſerviceable to the ſaid *R. J.* both in her Sickneſs and Health, ſhe the ſaid *R.* always expreſſed a great Affection for this Defendant, and as this Defendant verily believes, would never have thought of making any other Executors, if this Defendant, through her own Simplicity, had not oppoſed the ſame, as aforeſaid. And this Defendant ſaith, that the ſaid *R. J.* did of her own free Will reject the Complainant, and preferred this Defendant to be her Executrix; and tho' the Eſtate ſhe is likely to get by the ſaid Executorſhip will not amount to any Thing near what is ſuggeſted in the Bill, yet whatever the ſame may be, ſhe doth inſiſt ſhe is lawfully entitled

entitled thereto, and is not obliged to give the Complainant any Account thereof; and this Defendant denies ſhe did cauſe a Will to be made by the Will which the Complainant left with the ſaid *R. F.* and denies that the Will herein before ſet forth is a fraudulent Will, or was obtained by any undue or unlawful Means, but avers that the ſame was freely and voluntarily made and executed by the ſaid *R. F.* at a Time when ſhe was in good Health, and of a ſound and diſpoſing Mind and Memory, and that ſhe very well knew what ſhe did, having very often, both before and after the Making thereof, declared, *&c.* as this Defendant doubts not to prove; and this Defendant doth deny all Combination or Confederacy to the Prejudice or Injury of the Complainant; and therefore this Defendant hopes ſhe ſhall not be obliged to make a Diſcovery of the Perſonal Eſtate of the ſaid *R.* this Defendant having hereby admitted Aſſets in her Hands ſufficient to ſatisfy all the ſaid *R.*'s juſt Debts, with all Legacies and funeral Expences, and alſo humbly Hopes ſhe ſhall not be compelled to make any further Anſwer to the Complainant's ſaid Bill of Complaint; *without that*, that, *&c.* all which Matters, *&c.* and prays, *&c.*

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An Anſwer to a Bill to oblige the Execution of Articles for Sale of an Eſtate mortgaged, *&c.*

The joint and ſeveral Anſwers of M. D. *Widow and* F. E. *&c. Defendants, to the Bill of Complaint of* A. B. *Complainant.*

ALL Advantages of Exception to the Incertainties, Inſufficiences and other Imperfections in and by the Complainant's ſaid Bill of Complaint contained; to theſe Defendants now and at all Times hereafter ſaved; for Anſwer thereunto, or unto ſo much thereof as concerns theſe Defendants, they theſe Defendants anſwer and ſay, that they believe it to be true, that *T. D.* in the Plaintiff's Bill named, late Husband of this Defendant *M. D.* and late Father of the Defendant *F. E.* did in his Life-time duly make and publiſh his Laſt Will and Teſtament in theſe or the like Words following, (that is to ſay) *In the Name of God*, Amen, I *T. D.* of, *&c.* (ſetting forth the Will *verbatim*) as in and by the ſaid Will, whereto theſe Defendants refer themſelves, may more fully appear; and theſe Defendants believe that the ſaid *T. D.* at the Time of the Publiſhing his ſaid Will, was of ſound Mind, Memory and Underſtanding, and that he duly ſealed and deliver'd the ſame as and for his Laſt Will and Teſtament; and theſe Defendants have duly proved the ſame in the Prerogative Court of *Canterbury*, where the Original is ſtill remaining as theſe Defendants believe; and theſe Defendants believe that the ſaid

ſaid *T. D.* in his Life-time wanting Money did on or about, *&c.* in the Year, *&c.* borrow and take up at Intereſt of *G. H.* the Sum of, *&c.* and for Securing the Repayment thereof with Intereſt did by Indenture of that Date grant to him and his Heirs (amongſt other Things) the Meſſuage or Tenement and Lands in the Bill mentioned to have been contracted for by the Complainant, defeazible on Repayment of the ſaid Sum of, *&c.* with Intereſt on, *&c.* and theſe Defendants believe the ſaid whole Sum with all or the greateſt Part of the Intereſt for the ſame, from the Time of Borrowing thereof until this preſent Time, remains unpaid; and theſe Defendants have, for the Plaintiff's Satisfaction in the firſt Schedule hereto annexed, which they deſire may be taken as Part of this their Anſwer to the Complainant's Bill, ſet forth an Inventory and Account of all the perſonal Eſtate which hath come to their Hands, Poſſeſſion or Knowledge, or to the Hands or Poſſeſſion of any other Perſon or Perſons for their Uſe, and which ſaid perſonal Eſtate and Money receiv'd amount to the Sum of, *&c.* And theſe Defendants have alſo in the ſecond Schedule hereto annexed, which they deſire likewiſe may be taken as Part of this their Anſwer to the Plaintiff's ſaid Bill, ſet forth an Account of all ſuch Debts which the ſaid *T. D.* owed at the Time of his Death, and have ſince been paid by theſe Defendants, with an Account of ſuch Debts of the ſaid *T. D.* as remain unpaid, which as yet have come to their Knowledge, together with the Charges of his Funeral, and what Legacies

gacies remain unpaid; all which amount to the Sum of, *&c.* whereby it will appear that the perſonal Eſtate of the ſaid *T. D.* falls ſhort to pay his Debts and Legacies, the Sum of, *&c.* for which Reaſon theſe Defendants offer'd the Meſſuage or Tenements, and Lands mention'd in the Complainant's Bill to Sale, as they were adviſed and hoped they might lawfully do; and theſe Defendants confeſs they made ſuch Contract with the Complainant, and entered into and executed ſuch Articles for the Sale thereof as in the Plaintiff's ſaid Bill are ſet forth, and are willing to perform the ſaid Articles on their Part, and contented that the Defendant *G. H.* ſhall produce and ſhew the Writings relating to the Title of the ſaid Premiſſes to the ſaid Complainant or his Council, and never hindered or obſtructed the ſame, but the Defendant *F. E.* the Daughter of the ſaid *T. D.* being under the Age of 21 Years, the Defendants were adviſed not to proceed in Executing the Conveyances thereof, without the Authority and Decree of this Honourable Court for ſo doing; and theſe Defendants, each ſpeaking for herſelf, deny that they ever gave out that the ſaid *T. D.* made no Will, or that he was not of ſound and diſpoſing Mind, Memory and Underſtanding, when he ſealed and publiſhed the ſame, or ever pretended that his perſonal Eſtate was ſufficient to pay and diſcharge all his Debts, Legacies and funeral Expences, or that they ever refuſed to perform the ſaid Articles. And they are willing and contented that the Plaintiff ſhall pay off the Money due on the ſaid Mortgage to the ſaid

ſaid *G. H.* and that he ſhall thereupon aſſign his ſaid Mortgage to the Complainant or to whom he ſhall appoint, and are willing to join in Making ſuch Aſſignment; and theſe Defendants are doubtful that the perſonal Eſtate of the ſaid *T. D.* will prove ſo far deficient that his Debts will not be paid without Sale of all his real Eſtate; and the Defendants deny all Combination in the Bill charged; *without that*, that, *&c.*

Anſwer of the Mortgagee to the aforemention'd Bill.

The Anſwer of G. H. *one of the Defendants to the Bill of Complaint of* A. B. *Complainant.*

ALL Advantages, *&c.* for Anſwer ſaith, that *T. D.* in the Plaintiff's Bill named, having Occaſion of Money to carry on his Trade of, *&c.* as this Defendant believes, applied himſelf to this Defendant to borrow of him the Sum of, *&c.* offering to ſecure the Repayment thereof with Intereſt by Mortgage of the Meſſuage or Tenement and Lands herein after mentioned, and thereupon this Defendant did really lend and pay to the ſaid *T. D.* the ſaid Sum of, *&c.* and the ſaid *T. D.* in Conſideration thereof did, as this Defendant believes and doubts not but to prove, in and by certain Indentures of Leaſe and Releaſe bearing Date, *&c.* grant and convey to this Defendant and his Heirs all that Meſſuage or Tenement, *&c.* and the Reverſion and Reverſions, Remainder and Remainders thereof, and alſo all the Eſtate of him the ſaid *T. D.*

T. D. of and in the ſame, to hold to this Defendant, his Heirs and Aſſigns, to the only proper Uſe and Behoof of this Defendant, and his Heirs and Aſſigns for ever; but in the ſaid Indenture there is a Proviſo, whereby the ſame is made defeazible on the ſaid *T. D.* his Heirs or Aſſigns paying to this Defendant the full Sum of, *&c.* in and upon, *&c.* as by the ſaid Indentures of Leaſe and Releaſe, whereto this Defendant for more Certainty refers himſelf, will more fully appear; and this Defendant denies, that the ſaid *T. D.* in his Life-time, or either of the other Defendants in the Plaintiff's Bill named ſince his Death, have paid to this Defendant any Part either of the Principal or Intereſt ſecured by the ſaid Mortgage, except the Sum of; *&c.* which hath been paid for one Year's Intereſt of the ſaid Principal Sum, and doth ſay that not only the whole principal Money of, *&c.* but alſo the Intereſt thereof from the Date of the ſaid Mortgage remains really and juſtly due and owing to this Defendant, except the ſaid, *&c.* paid as aforeſaid. And this Defendant denies, that he ever made any Aſſignment of the ſaid mortgaged Premiſſes, or any Part thereof, or otherwiſe incumbred the ſame; or that he ever pretended to be a real Purchaſer of the ſaid Premiſſes from the ſaid *T. D.* in his Life-time for a valuable Conſideration; or ever refuſed to diſcover his Mortgage, or what was due thereupon, or to produce the Writings relating to the Title of the ſaid Premiſſes; but this Defendant is willing, on Payment to him of the ſaid Mortgage-Money and Intereſt, together with the Charges of this

this Suit, to aſſign the ſaid Mortgage as this Court ſhall direct, free from all Incumbrances done by him; and as to all other the Charges and Allegations in the Complainant's Bill mention'd this Defendant ſaith that he is utterly a Stranger thereto, and knows nothing thereof, and therefore can give no Anſwer thereabout, ſaving that he believes the ſaid *T. D.* ſome Time before his Death did make and execute a Will, and thereby give the Premiſſes above-mentioned to the other Defendants *M. D.* and *F. E.* &c. as in the Bill is ſet forth, and ſaith that the ſaid *T. D.* was then of ſound Memory and Underſtanding, *&c. without that*, that, *&c.*

An Anſwer to a Bill brought to be reliev'd againſt an uſurious Contract, and a Deed of Mortgage.

The ſeveral Anſwer of W. G. *one of the Defendants to the Bill of Complaint of* W. F. *Eſq; Complainant.*

THIS Defendant ſaving and reſerving, *&c.* confeſſeth that his Majeſty, that now is, did grant by Letters Patent the Mills and Wears of, *&c.* to the Complainant at the Time and in ſuch Manner as in the Bill is ſet forth; but denies that the Complainant lived in the Houſe of this Defendant at the Time of the ſaid Grant, or was indebted to him in any Sum of Money, or to this Defendant's Brother *J. G.* to his Knowledge or Belief, and denies that he or his ſaid Brother did lay any Preſſures or Hardſhips on

the Complainant, to compel him to give them an advantageous and unreaſonable Bargain of a Moiety of the Complainant's Intereſt in the ſaid Mills and Wears as by the Bill is falſly ſuggeſted, and alſo denies that he or his ſaid Brother uſed any threatning Menaces, Perſwaſions or Inſinuations whatſoever to induce the Complainant to come to any Agreement with them, as by the Bill is alledged, but on the contrary this Defendant and his ſaid Brother came to an Agreement with the Complainant by the Complainant's Perſwaſion and at his own particular Inſtance and Requeſt, which Agreement was reduced into Writing, and certain indented Articles were executed on the Day of, *&c.* in the Year, *&c.* between the Complainant this Defendant and his ſaid Brother, and which ſaid Articles contain the Particulars of the Agreement relating to the Sum of 1500 *l.* in the Bill mentioned, and the Management of the Stock and Trade agreed to be carried on in Partnerſhip between the Parties aforeſaid, to which Articles this Defendant for further Certainty refers himſelf; and this Defendant further anſwering denies that he or his ſaid Brother procured the ſaid Agreement to be reduced and put into Writing as by the Bill is alledged, but it was the Complainant who gave Inſtructions to *G. J.* Gent. to draw the Deeds to the Purport and Effect in the Bill mentioned; the Defendant confeſſeth that the Sum of 600 *l.* Part of the Sum of 750 *l.* which was to be paid in Hand to the Complainant, was only paid to him as by the Bill, but the Reaſon was that the Complainant refuſed to take the remaining

remaining 150*l.* having no Occaſion for it as he inform'd this Defendant and his ſaid Brother, and he requeſted this Defendant and his ſaid Brother, to give him the Complainant a Receipt for the ſame, as if the Complainant had paid the ſaid 150*l.* in Part of the 750*l.* into the Stock in Partnerſhip between the Complainant and this Defendant; and this Defendant further anſwering confeſſeth that the ſaid Sum of 1500*l.* was to be advanc'd, apply'd and paid by the Defendant and his ſaid Brother according to the Articles, as in the Bill is mentioned, and the Complainant was to deliver in and pay as Stock 750*l.* as by the Bill; but the Defendant inſiſts it is provided by the ſaid Articles, that, *&c.* and verily believes that the Sum of, *&c.* was the full Value and Price of a Moiety of the ſaid Mills at the Time of the Purchaſe, and the Defendant denies that he this Defendant or his ſaid Brother intended to deceive the Complainant; for the three Deeds in the Bill mentioned were drawn by the Direction of the Complainant; the Defendant ſays, that at the Complainant's preſſing Solicitation and Requeſt, and not for any of the Reaſons in the Bill, this Defendant and his ſaid Brother came to an Agreement with the Complainant, *&c.* and this Defendant confeſſeth the Deed of Mortgage as by the Bill is ſet forth, and that all the Deeds bear Date as by the Bill, and ſays the other Sum of 750*l.* was always ready in the Hands of this Defendant and the ſaid *J. G.* his Brother, and the Complainant deſired it might be paid as he drew Bills for the ſame or ſhould direct it to be

paid, and the ſaid Sum of 750 *l.* was paid and advanced to the Complainant for the ſaid Joint Trade and Partnerſhip, regularly and exactly at the ſeveral Times the Complainant drew Bills on the Caſhier, and ordered and directed how the Money ſhould be laid out and diſpos'd of, and none of the Complainant's Bills were proteſted but duly paid, *&c.* The Defendant does not believe that the Complainant wanted Money for the Management of the ſaid Trade as by the ſaid Bill is ſuggeſted, and denies that he could not get full Employment for the ſaid Mills and Premiſſes for Want of a ſufficient Stock; nor doth this Defendant apprehend that the Complaiant was damnified or ſuſtained any Loſs for any of the Reaſons in the Bill ſet forth, or becauſe, *&c.* and denies that there has been any Failure or Default on the Part of the Defendant or his ſaid Brother, but the Defendant has good Reaſon to believe that the Complainant has misbehav'd himſelf notoriouſly in the Conduct and Management of the ſaid Trade; and the Defendant inſiſts on the Validity and Legality of the ſeveral Deeds and Articles in the Bill mention'd, and particularly that the Sum of 10 *l. per Cent.* as by the Bill, will not be conſtrued uſurious on the Circumſtances of the Caſe, though generally Money lent bears an Intereſt of only 5 *l. per Cent.* for by the Proviſo in the Deed of Mortgage the 10 *l. per Cent.* is payable for no longer Time than 'till the Complainant paid the 750 *l.* into the Joint Stock for carrying on the Trade purſuant to the ſaid Articles; and the Complainant who

applied for the Money affirmed that the Profit in the ſaid Trade would amount to 100 *l. per Cent. per Ann.* to him, and this Defendant and his ſaid Brother were to have no Share of the Profits in the mean Time for the ſaid 750 *l.* until the ſame was paid by the Complainant, but 10 *l. per Cent.* and that being in the Complainant's own Power and Choice, the Defendant apprehends the Contract is not uſurious but perfectly equitable and obligatory; the Defendant confeſſeth he hath exhibited a Bill againſt the Complainant for an Account on the Foot of the ſaid Deeds, and to oblige the Complainant to confeſs the ſeveral Deeds in the Bill mentioned, *&c.* The Defendant denies, *&c.* but confeſſes, that at the Time of making the ſaid Agreement the Complainant did lodge in the Defendant's Houſe, and was indebted to the Defendant about the Sum of, *&c.* for the Complainant, his Wife and Children's Diet and Lodging, the Particulars whereof this Defendant gave to the Complainant, and believes the Complainant was then very poor, but denies that he this Defendant or his ſaid Brother to his Knowledge or Belief threatned to ſue or impriſon the Complainant, if he would not conſent to let them into a Partnerſhip with him as by the Bill is moſt falſly ſuggeſted, and denies that the Terms contain'd in the ſaid Agreement were at any Time inſiſted on by the Defendant or his ſaid Brother, for the Complainant propos'd them of his own Accord; this Defendant denies, that he ever did declare, or hear his ſaid Brother declare, that they were admitted into the ſaid Partnerſhip

on the ſame Terms and Conditions with thoſe propos'd by Sir *T. B.* nor doth this Defendant know how the ſaid Terms differ, and ſays that the Complainant directed and procured the ſaid Deeds in the Bill mentioned to be drawn to the Effect as by the Bill, and that a Moiety of the 1500*l.* was lent to, and detained by the Complainant, as herein before ſet forth, and if paid into the common Stock would belong to the Complainant, *&c.* The Defendant confeſſeth the ſaid Deed of Mortgage mentions 750*l.* to be paid the Complainant, *&c.* and ſays that the particular Sums of Money, and the ſeveral Times when paid by the Defendant and his ſaid Brother to the Complainant, and laid out in Stock or Goods for the ſaid Partnerſhip ſince the Date of the ſaid Articles, and alſo in what Goods or Stock and to whom paid, appear in a Schedule hereunto annexed, which the Defendant prays may be taken as Part of this his Anſwer: This Defendant ſays, the Complainant is to have the Management of the ſaid Mills and Premiſſes, ſubject to the Proviſo's and Covenants contained in the ſaid Articles, and not otherwiſe, to which for further Certainty this Defendant refers; and that he this Defendant hath brought an Ejectment for the Recovery of a Moiety of the ſaid Mills, as by Law he may, and humbly hopes he will not be ſtopped by Injunction of this Honourable Court to gain the Poſſeſſion of what he has really and *bona fide* purchaſed, and which he ought to poſſeſs and enjoy in Equity and good Conſcience, and inſiſts and relies on the Agreement, contained in the

the ſaid Deed of Mortgage which was made at the Complainant's particular Inſtance and Deſire: This Defendant denies the Complainant offered or propoſed to pay this Defendant and his ſaid Brother, or either of them, any Money whatſoever advanced by them as by the Bill is alledged; and this Defendant ſaith, that he verily believes the Complainant is in ſuch poor and indigent Circumſtances that he is unable to pay the ſame, having been confin'd in Gaol for Debt ſince the Month of, *&c.* in the Year, *&c.* and that the Complainant tho' he is in Gaol as aforeſaid, will not permit this Defendant to take Care of the ſaid Mills and Premiſſes, and denies the Complainant hath a Right to continue in Poſſeſſion ſo as to keep out this Defendant, ſince the Complainant cannot reſide in and attend the Affairs of the ſaid Mills; and in Caſe the Complainant was out of Gaol, this Defendant conceives he this Defendant hath a Right to enter into the ſaid Mills and inſpect the Books and Accounts relating to the ſaid Trade and Partnerſhip, which the Complainant refuſes to admit of, and which this Defendant conceives to be very unequitable Treatment; and this Defendant ſaith he hath come three ſeveral Times from his own Affairs in, *&c.* to, *&c.* upon that and no other Occaſion, and is a great Sufferer by being abſent from his own Buſineſs and Family there; and that he this Defendant and his ſaid Brother, or either of them, never received to the Value of one Penny of the Profits of the ſaid Mills and Premiſſes, or in lieu of all the Money paid to the Complainant and

advanced and laid out by the Defendant and his ſaid Brother, as herein before and in the ſaid Schedule annexed are ſet forth; and this Defendant further ſaith, that the ſaid *J. G.* this Defendant's Brother by Deeds of Leaſe and Releaſe bearing Date, *&c.* in Conſideration of the Sum of, *&c.* paid him by this Defendant, granted and conveyed all his Half of the Moiety of the ſaid Mills and Premiſſes, and all his Right and Intereſt in the ſame, to this Defendant, his Heirs and Aſſigns for ever; and alſo by Indentures of Leaſe and Releaſe bearing Date, *&c.* the ſaid *J. G.* remiſed and releaſed all his Eſtate and Intereſt in the other Moiety of the ſaid Mills and Premiſſes granted by the Complainant in Mortgage to this Defendant and the ſaid *J. G.* for the Sum of, *&c.* to be paid into the Joint Trade, to this Defendant, his Heirs and Aſſigns for ever; and the ſaid *J. G.* alſo by Indenture of Aſſignment dated, *&c.* granted and aſſigned all his Part and Share in the Joint Trade and Copartnerſhip relating to the ſaid Mills and Premiſſes, and all his Intereſt therein, and of and in the Stock, Dividends and Profits thereof, to him this Defendant, his Executors Adminiſtrators and Aſſigns; and this Defendant is ready and willing to anſwer and make Satisfaction to the Complainant for any Demand the Complainant hath or can juſtly claim from the ſaid *J. G.* his ſaid Brother; *without that*, that, *&c.*

The

The Anſwer of the Attorney as to making the Deeds, *&c.*

The Anſwer of G. J. *Gent. one of the Defendants to the Bill of Complaint of* W. F. *Eſq; Complainant.*

THIS Defendant ſaving to himſelf all Benefit and Advantage of Exception to the Complainant's ſaid Bill of Complaint, for Anſwer unto ſo much thereof as concerns him this Defendant to anſwer unto, he this Defendant ſaith, that in or about the Month of, *&c.* in the Year, *&c. W. G.* Merchant, to whom this Defendant was then a Stranger, applied to him this Defendant to have certain Articles, Conveyances and Deeds drawn between him the ſaid *W. G.* and his Brother *J. G.* and the Complainant, relating to the Mills and Wears of, *&c.* and for carrying on a Joint Trade and Copartnerſhip in the ſaid Mills, and at the Houſe of the ſaid *W. G.* in, *&c.* after all the Parties had talked over and conſidered their ſeveral Intereſts, and this Defendant had adviſed them what was proper and neceſſary to be done, the Complainant *F.* gave Inſtructions for a Conveyance from him the ſaid Complainant to the ſaid *W. G.* and *J. G.* of one Moiety of the ſaid Mills, for a Mortgage of the other Moiety, and Articles of Copartnerſhip for carrying on a Joint Trade; the Subſtance and Contents of which Inſtructions, for the Conveyance was, that the Complainant having obtained a Grant by Letters Patent from his preſent Majeſty of the Mills of, *&c.* to him and his Heirs

Heirs for ever, under a certain Rent, in Conſideration of 1500 *l.* whereof 750 *l.* to be paid to the Complainant, and the other 750 *l.* to be laid out and employed by the ſaid *W.* G. and *J.* G. in the Trade in the ſaid Mills, he the ſaid Complainant *F.* ſhould fully and abſolutely grant, releaſe and convey to the ſaid *W.* and *J.* G. and to their Heirs one Moiety of the ſaid Mills and Premiſſes; and the Subſtance of the Inſtructions for the ſaid Mortgage was, after reciting the ſaid Patent and Conveyance, that in Conſideration of the 750 *l.* to be paid to the Complainant, he the ſaid Complainant ſhould grant, releaſe and convey to the ſaid *W.* G. and *J.* G. and their Heirs the other Moiety of the ſaid Mills as a Security for the Repayment of the ſaid 750 *l.* into Trade as ſoon as might be within ſeven Years, and in the mean Time pay after the Rate of 10 *l. per Cent. per Annum* for the ſame to the ſaid *W.* and *J.* G. for Performance whereof a *Proviſo* or Condition with the uſual Covenants were to be therein inſerted; and the Subſtance and Contents of the Inſtructions for the ſaid Articles, after a Recital of the ſaid Patent and Conveyance, *&c.* was, that a Copartnerſhip ſhould be entered into for a long Term of Years between the Complainant, and the ſaid *W.* G. and *J.* G. for carrying on and managing a Joint Trade of grinding Corn, to be tranſported abroad in Flower, and other Buſineſs, with the 1500 *l.* the Conſideration of the aforeſaid Conveyance, 750 *l.* whereof to be delivered in as Stock by the ſaid *W.* and *J.* G. on or before, *&c.* then next, and the 750 *l.* paid to the Complainant

plainant to be delivered in by him as Stock as ſoon as conveniently might be within ſeven Years, according to the Intention of the Mortgage above-mentioned, in which Articles of Copartnerſhip ſeveral Covenants were to be comprized, particularly that all Gain and Increaſe in the ſaid Joint Trade ſhould be divided into two equal Parts or Moieties; one Part or Moiety to be paid to the Complainant, and the other Part or Moiety to be paid to the ſaid *W.* and *J. G.* that the Complainant ſhould manage, *&c.* that the ſaid *W.* and *J. G.* ſhould, *&c.* that juſt Books of Account ſhould be kept, and at the End of three Months the Parties ſhould render to each other true Accounts, *&c.* which Deeds and Covenants therein, amongſt ſeveral other Clauſes and Agreements of leſs Moment, were to the beſt of this Defendant's Knowledge and Remembrance all or the greateſt Part directed by the Complainant by Word of Mouth, and this Defendant verily believes freely and voluntarily, or were all freely and voluntarily by him the ſaid Complainant then agreed to and approved of, without any ſiniſter or underhand Dealings of the ſaid *W.* and *J. G.* or either of them, who at that Time, and ſeveral Times ſince, declared to this Defendant that they had much rather have the Money lent on the Mortgage in the Joint Trade than the Allowance after the Rate of 10 *l. per Cent.* for the ſame; and the Complainant not only told this Defendant he had himſelf ſent for and order'd this Defendant to be employ'd, but deſired him this Defendant to expedite the Deeds from the Inſtructions given, which

which he this Defendant did, and by the Advice of Counſel ſettled the Draughts of the ſaid Deeds, and after they were read and approved of by the Complainant, and the ſaid *W.* and *J. G.* got them ingroſſed; whereupon the Deeds being all read over to, and compared by the Complainant with the ſaid Draughts, in the Preſence of, *&c.* the Complainant's Friend and other Witneſſes, the ſaid Conveyance, Articles and Mortgage were duly executed, to the mutual Satisfaction of the ſaid Complainant and the ſaid *W.* and *J. G.* This Defendant alſo ſaith, that the Inſtructions given by the Complainant by Word of Mouth were put into Writing by him this Defendant in his this Defendant's own Hand, which Inſtructions were truly read to the Complainant, and then by him agreed unto, and from the ſame Inſtructions the Draughts of the ſaid Deeds were prepared and none other, and from the ſaid Draughts and none other the Deeds were ingroſſed, all by the Direction and with the Approbation of the Complainant; but the ſaid Inſtructions, according to the Nature of ſuch Things in ſo long a Space of Time after the Draughts are perfected, have been ſince either miſlaid by this Defendant, or neglected to be preſerved, ſo that he this Defendant doth not know where they now are, if they are any way to be found, unleſs they are in the Cuſtody of the Complainant; and this Defendant ſays, that after the ſeveral Deeds were thus drawn from the ſaid Inſtructions, and duly executed as aforeſaid, the Complainant return'd Thanks to this Defendant for his Care and Fidelity therein, at the ſame

ſame Time or ſoon after employing him further in the making of his the Complainant's Will; and thus Matters ſtood 'till *J. G.* in the Year, *&c.* gave Directions to this Defendant to draw a Conveyance, and proper Deeds of Aſſignment, from him the ſaid *J. G.* of all his Right, Title and Intereſt in the ſaid Moiety of the ſaid Mills, Mortgage and Joint Trade, to the ſaid *W. G.* in Conſideration of the Sum of, *&c.* which he this Defendant alſo did to the Satisfaction of the ſaid *J. G.* and was likewiſe a Witneſs to the laſt mentioned Deeds: This is the Subſtance of his this Defendant's Knowledge of this Affair, in the moſt material Circumſtances thereof, and this Defendant is ſurprized that the Complainant ſhould make him a Defendant to this Suit, to diſcover whether he drew the aforementioned Deeds, and who gave Directions or Inſtructions therein, with the Contents thereof, when the Complainant well knows that all that this Defendant hath ſaid as to the Complainant's Conveyance, Mortgage and Articles to and with the ſaid *W.* and *J. G.* with the Inſtructions for the ſaid Deeds, is true, in the ſeveral Particulars above inſtanced and ſet forth, and that he this Defendant hath no Intereſt in this Suit, or is any Ways concern'd therein, any farther than as an Evidence between the ſaid *W.* and *G. J.* and him the ſaid Complainant, and to maintain and juſtify what he had legally done by and between them; all which Matters, *&c.*

An

An Anſwer to a Bill for Recovery of Part of a Manor and Tithes.

The ſeveral Anſwers of T. C. *Eſq; one of the Defendants to the Bill of Complaint of* W. B. *Eſq; and* M. *his Wife Complainants.*

ALL Advantages of Exception to the Incertainties, *&c.* in the Complainant's ſaid Bill of Complaint contained, to this Defendant now and at all Times ſaved; for Anſwer thereunto, or unto ſo much thereof as any Ways concerns him this Defendant, he this Defendant anſwereth and ſaith, that he hath heard that *J. W.* Eſq; deceaſed in the Plaintiff's Bill named, was in his Life-Time ſeiſed of and in the Manor of, *&c.* and of and in the Rectory or Impropriate Parſonage of, *&c.* in the Pariſh of, *&c.* but this Defendant knows not the ſame to be true of his own Knowledge, neither doth this Defendant know whether the ſaid Manor contains the Tenements in the Bill mentioned or not, or whether the ſaid Rectory, or Parſonage, lies within the Boundaries and Places in the Bill ſet forth; nor doth this Defendant know what Rents are payable out of the ſaid Manor by or to the Plaintiff, or whether there are any Waſtes or Commons belonging to the ſaid Manor or not; but this Defendant believes it to be true that the Plaintiff *M.* is the ſole Daughter and Heir of the ſaid *J. W.* deceas'd, and that ſhe intermarried with the Complainant *W. B.* who in her Right may be entitled to ſuch Manors, Lands

and Tenements whereof the ſaid *J. W.* died ſeiſed for ought this Defendant knows to the contrary; and this Defendant confeſſeth that he this Defendant is Lord of the Manor of, *&c.* in the Bill mentioned, but denies that any of his Tenants to his Knowledge have thrown down any Fences or Incloſures between his Lands and the Lands of the Complainants, whereby to prejudice the Complainants, and alſo denies all Combination in the Bill charged; *without that*, that *&c.*

Anſwer of the Rector. That he hath heard that *J. W.* Eſq; in the Plaintiff's Bill named was in his Life-time ſeiſed of the Impropriate Rectory or Parſonage of, *&c.* in the Bill mentioned, but what are all the particular Tithes payable to the Impropriator thereof this Defendant knows not, but this Defendant believes it to be true that the ſaid Plaintiff *M.* is the only Daughter and Heir of the ſaid *J. W.* And this Defendant further ſaith, that he now is and for ſeveral Years laſt paſt hath been Vicar of the Vicarage of, *&c.* being lawfully preſented, inſtituted, and inducted thereunto, and hath conſtantly officiated and performed the Cure there, and in that Reſpect ought to have all the Tithes of, *&c.* ariſing, happening or increaſing in the Places, and within the Boundaries of, *&c.* And this Defendant hath likewiſe, as to the ſaid Vicarage belonging, Half the Tithes of, *&c.* in all Tithable Places, as alſo all other Vicarage Tithes not mentioned in the Plaintiff's Bill; and this Defendant knows nothing to the contrary but that Tithes are and have been paid in Kind

Kind to the Impropriator, in all other Parts of the ſaid Pariſh in all Tithable Places as bounded in the Plaintiff's Bill; and this Defendant denies he ever obſtructed the Plaintiffs or their Agents in collecting any of the Tithes that belong to them, having intermeddled with none ſave ſuch as are belonging to himſelf, and likewiſe denies all Combination, *&c. without that*, that, *&c.*

Anſwer of the Tenants. The Defendant *J. C.* believeth it to be true, that *J. W.* Eſq; deceaſed, in his Life-time was ſeiſed in Fee-ſimple of and in the Manor of, *&c.* in the ſaid Bill of Complaint mentioned, and that he died ſo ſeiſed, and that the Plaintiff *M.* is the ſole Daughter and Heir of the ſaid *J. W.* And this Defendant doth confeſs that he now holds and enjoys one Tenement with the Appurtenances, within and Parcel of the ſaid Manor, for the Remainder of a certain Term of, *&c.* Years, under the Yearly Rent of, *&c.* which Tenement contains theſe Particulars following, (*viz.*) *&c.* And this Defendant ſays, that to the ſaid Tenement belongs, and the Tenants and Occupiers thereof have conſtantly uſed, taken and enjoyed Common of Paſture for all commonable Cattle, in all the Waſtes and commonable Places within the ſaid Pariſh and Manor of, *&c.* at all Times of the Year, *&c.* And this Defendant denies that he hath broken down any Fences between the Plaintiff's Lands and the Lands of any other Perſon whatſoever, and alſo all Combination, *&c.* And the Defendant *T. J.* for himſelf ſaith, that

that there is iſſuing and payable for ever to the Lord of the ſaid Manor of, *&c.* for the Time being, out of all thoſe Meſſuages and Tenements with the Appurtenances of him this Defendant, ſituate, *&c.* the Yearly Rent of, *&c.* which Rent this Defendant duly paid to the ſaid *J. W.* 'till about, *&c.* Years ſince, and if the ſame had been demanded by the Plaintiffs, he this Defendant would have paid the ſaid Rent to this Time; and he never denied the Payment thereof, but is ready and willing not only to pay the Arrears thereof, but the future Rent of, *&c. per Annum*, as the ſame ſhall yearly become due, and be hereafter demanded by the Plaintiffs, or thoſe to whom the ſaid Manor doth or ſhall belong: And as to all other the Charges in the Complainants ſaid Bill, theſe Defendants, each ſpeaking for himſelf ſaith, they are Strangers thereto, and cannot make any Anſwer thereabout; *without that*, that, *&c.*

A joint and ſeveral Anſwer of Defendants to a Bill concerning a Deed of Settlement, *&c.*

The joint and ſeveral Anſwers of J. W. *Truſtee, and* L. W. *Husband of* E. *the Complainant's Siſter, to the Bill of Complaint of* W. H. *Infant by*, &c. *his next Friend and Guardian Complainant.*

THE ſaid Defendants ſaving, *&c.* ſeverally anſwer and ſay, and firſt the Defendant *J. W.* for himſelf anſwering ſaith, that *J. H.* late Father of the Complainant was in his Life-

time poſſeſſed of certain Lands, Tenements and Hereditaments in, *&c.* of the yearly Value of, *&c.* or thereabouts, and no more; and that ſome Friends of the ſaid *J. H.* knowing that he the ſaid *J.* had a Power to make a Settlement of the ſaid Premiſſes, having Compaſſion on his younger Children, of which Number the Complainant was one, perſuaded him to ſettle his Eſtate in Truſt, ſo that there might be ſome Proviſion made for the younger Children of him the ſaid *J. H.* and thereupon he the ſaid *J. H.* did, as in the Bill is mentioned, execute a Deed of Demiſe of the Premiſſes for a long Term of Years then to come and yet unexpired to this Defendant and *D. B.* one other of the Defendants in the Complainant's Bill of Complaint mentioned, for raiſing 500*l.* apiece for the younger Children of the ſaid *J.* payable to them at their reſpective Ages of 21 Years, or Days of Marriage of *E.* the Complainant's Siſter, as in and by the Complainant's ſaid Bill is mentioned and ſet forth; but the ſaid *J. W.* this Defendant utterly denies he ever inſinuated himſelf with the ſaid *J. H.* or uſed any indirect Means for procuring of ſuch Deed of Settlement or Demiſe, neither did this Defendant at the ſame Time, or any Time before, or after, know that the ſaid Lands and Premiſſes were by ſeveral Deeds and Conveyances ſo ſettled that the Complainant's Father had no Power by Law to make ſuch Settlement or Leaſe as aforeſaid, as the Complainant in and by his ſaid Bill of Complaint hath ſuggeſted; and this Defendant ſaith, that he believes it to be true that *J. H.* the Com-

Complainant's Father, and *R. H.* the Complainant's elder Brother, are both dead, and that the ſole Right to the Premiſſes may be veſted in the Complainant, upon his Diſcharging the Incumbrances charged thereon by the ſaid *J. H.* his Father in his Life-time, and all other Incumbrances created by Law-Suits ſince his Death; but this Defendant denies he ever intermedled as the only acting Truſtee, or received any of the Rents, or made any Benefit of the Premiſſes in Queſtion ſince the Death of the ſaid *J. H.* or that he hath any ways wronged or defrauded the Complainant, or made away with, cancelled or defaced, or ever had in his Cuſtody, or knows how to come at any ſuch Deed or Writing, which the Complainant in his Bill of Complaint, without any Manner of Ground, pretends would bar his Father's Deed of Truſt, and fix the Inheritance of the Premiſſes in himſelf clear from paying his Brother and Siſter's Portions, and diſcharging the other Incumbrances upon the ſaid Eſtate; nor doth this Defendant believe there ever was any ſuch Deed or Writing that would bar or effect the Truſt, had not the ſame been confirmed by the Decree of this Honourable Court ſigned and inrolled, the which this Defendant is adviſed he might have pleaded to the Complainant's now Bill of Complaint, and humbly hopes and conceives he ſhall reap as much Benefit thereby as if he had pleaded the ſame; and the ſaid Defendant further anſwering ſaith, that he believes it to be true, that the Defendant *D. B.* might aſſign his Truſt to, *&c.* about the Time mentioned in the Bill,

and that there was ſuch Proceedings in this Honourable Court as in and by the Complainant's Bill of Complaint is ſet forth; but this Defendant utterly denies that he knows what Money the Defendant *D. B.* had and received for ſuch Aſſignment of his Truſt as aforeſaid, or in what Capacity or Condition the ſaid, *&c.* was in at that Time. And the Defendant *L. W.* for himſelf ſeverally anſwering, ſaith, that true it is he did intermarry with and take to Wife *E.* the Complainant's Siſter, at which Time he this ſaid Defendant might have had a greater Fortune, having 100*l. per Annum* good Land of Inheritance, notwithſtanding the Complainant in his Bill moſt untruly ſuggeſted that this Defendant was a Man of no Fortune; and this Defendant further anſwering ſaith, that he hath received as a Portion with the ſaid *E.* his Wife the Sum of, *&c.* and no more, procured by the Defendant, *&c.* who is the only acting Truſtee as this Defendant hath been inform'd, and verily believes to be true; and alſo that the ſaid Defendant did raiſe the ſame by Way of Mortgage upon Part of the Truſt Eſtate, purſuant to the Decree of this Honourable Court; and this Defendant craves a farther Allowance of, *&c.* remaining yet due to him of his ſaid Wife's Portion, there being due to her at the Time of his Intermarriage with her the ſaid *E.* for Principal and Intereſt the juſt Sum of, *&c.* the which this Defendant humbly conceives to be his Right; and the ſaid Defendant further anſwering ſaith, that he knows nothing concerning any ſuch Deeds or Writings as in the Complainant's Bill

of Complaint are mentioned, or how the ſaid Complainant's Father came to ſettle the ſaid Eſtate in Truſt, or how he was ſeiſed or poſſeſſed of the ſame, being altogether a Stranger thereunto, but refers himſelf therein to the ſeveral Anſwers of the ſeveral other Defendants in the ſaid Complainant's Bill named; and this Defendant further ſaith, that he never intermeddled with the Truſt ſince the Defendant *D. B.*'s Aſſignment of the ſame to the Defendant, *&c.* but wholly left the ſame to him who was the Plaintiff's Guardian, and the only acting Truſtee; nor hath this Defendant at any Time advantaged himſelf one Penny by the Eſtate, but on the Contrary this Defendant doth aver that he is ſome Hundreds of Pounds the worſe for his Kindneſs to the Complainant, and the ſecuring the Eſtate from going from him, the which the Plaintiff ought to have been ſenſible of, and not have troubled this Defendant with this vexatious Suit; all which this Defendant well hopes this Honourable Court will in due Time take Notice of: And both theſe Defendants deny all Combination with the other Defendant, or any other Perſon or Perſons whatſoever, with an Intent to defeat and defraud the Complainant, as in the Complainant's Bill of Complaint is untruly ſuggeſted; *without that*, that, *&c.*

An Anſwer to a Bill, and Diſclaimer.

The ſeveral Anſwer and Diſclaimer of A. B. *one of the Defendants, to the Bill of Complaint of* C. D. *Complainant.*

THIS Defendant now and at all Times, *&c.* ſaith, that he this Defendant on Behalf of *D. B.* one of the other Defendants in the Bill named, did about, *&c.* Years ago contract and agree with *L. W.* for the Purchaſe of the Meſſuage or Tenement with the Appurtenances in, *&c.* now in Queſtion, and in the Poſſeſſion of the Defendant *D. B.* which ſaid Meſſuage and Premiſſes at that Time had been in the Poſſeſſion and Seiſin of the ſaid *L. W.* for above twenty Years before, for the Purchaſe whereof this Defendant on the Behalf of the ſaid *D. B.* agreed to give, and accordingly did give and pay to the ſaid *L. W.* the Sum of, *&c.* which was the full and real Value thereof; and in Conſideration thereof the ſaid *L. W.* by Deed indented bearing Date, *&c.* did grant and convey to the ſaid *D. B.* and his Heirs, the ſaid Meſſuage or Tenement, with the Appurtenances abovementioned; by Virtue of which Deed of Conveyance he the ſaid *D. B.* as this Defendant hath heard and believes, entered upon and became ſeiſed of the ſaid Meſſuage or Tenement and Premiſſes, and continued ſo ſeiſed thereof without any Entry or Claim made by the Complainant, or any other Perſon or Perſons, until, *&c.* in the Year, *&c.* when the ſaid *D. B.* as this Defendant

Defendant hath heard and believes, by good Conveyance in the Law in Conſideration of the Sum of, *&c.* to him paid, granted and conveyed the ſaid Meſſuage or Tenement with the Appurtenances to the Defendant, *&c.* and his Heirs, who thereupon entered on and was and yet is ſeiſed and poſſeſſed of the ſame; and this Defendant ſaith, that he doth not know that the ſaid *H. P.* in the Bill named was ever ſeiſed of the ſaid Premiſſes or any Part thereof, nor ever knew, or heard of any Settlement or Conveyance made by the ſaid *H. P.* of the ſame Premiſſes, or of any Part thereof; and further ſaith, that he this Defendant was adviſed and believes the ſaid *L. W.* had good Right and Title to ſell the Inheritance of the ſaid Premiſſes ſo purchaſed by the ſaid *D. B.* as aforeſaid; and this Defendant never had any Notice of any Right or Title the Complainant or any other had, or might or could claim of in or to the ſame, or to any Part thereof, before the filing of the ſaid Complainant's Bill; and this Defendant further ſaith, that he this Defendant never had, nor claimed to have, nor doth this Defendant now claim any Right, Title or Intereſt of in or to the Premiſſes in Queſtion, or any Part thereof; and this Defendant doth Diſclaim all Right and Title to the ſame, and every Part thereof, with the Appurtenances; and this Defendant doth deny all Manner of Combination and Confederacy in the Bill charged; *without that*, that, *&c.*

An Anſwer to Part of a Bill, and Plea to the other Part thereof.

The Anſwer as to Part, and Plea as to the other Part, of M. D. *Eſq; Defendant, to the Bill of Complaint of* P. A. *Gent. Executor of* S. M. *Complainant.*

THE ſaid Defendant ſaving to himſelf, *&c.* ſaith, That he was intimately acquainted with *L. M.* in the Bill named, both before his Marriage with the ſaid *S. M.* and after, until the Time of his Death, and that he the ſaid *L. M.* complained to this Defendant that there were ſtrict Articles made upon his Marriage with the ſaid *S.* and lamented his Condition; that he depoſited his Money in the Hands of the Truſtees, and could not command a Penny thereof, nor perſwade his Wife to abate any Part of the Strictneſs of the ſaid Articles, and thereupon he went into the Army, and was made, *&c.* And being ſome Time after at, *&c.* on, or about, *&c.* he told this Defendant that he had a conſiderable Sum of Money by him, which he would depoſite in his, this Defendant's Hands, that he might have of his own to Command, and that he repented he had put ſo much into his Wife's Hands and Power, and alſo declared to this Defendant, that ſhe ſhould have no more Money of his, and that if he died in the Wars, he charged this Defendant by no Means to let his ſaid Wife have it, but ſhould give it to his Relations, if that any of them came to him; but this

this Defendant ſaith, that he never did know, ſee, or read, or hear read, either the Articles or Bond in the Bill mentioned, nor any Counterpart or Copy of them, or either of them, nor was ever acquainted with the Purport of them, or either of them, by the ſaid *L. M.* or any other, in any other Manner than is above-mentioned, ſave by the Complainant's Bill; and this Defendant confeſſeth it to be true, that on or about, *&c.* this Defendant did receive of the ſaid *L. M.* a conſiderable Sum of Money, (tho' what the ſame was, this Defendant conceiveth this Honourable Court will not compel him to diſcover, for the Reaſons in this his Anſwer and Plea alledged) but 'twas not the Sum in the Bill mentioned, and upon Receipt of the ſaid Sum of Money this Defendant did give the ſaid *L. M.* a Note under his Hand, teſtifying the Receipt thereof, and that this Defendant did promiſe to keep it for him in his Cuſtody, until ſuch Time as he, this Defendant, ſhould be ordered particularly to diſpoſe of the ſame for him, or for his Uſe, and this Defendant did receive the ſaid Money upon no other Truſt, Condition, or Agreement whatſoever, than as aforeſaid. And this Defendant ſaith, that ſome ſhort Time after the ſaid *L. M.* was killed in the Battle of, *&c.* and afterwards, to wit, in or about the Month of, *&c.* in the Year, *&c.* one Mr. *G. M.* Brother of the ſaid *L. M.* came to this Defendant, and brought to this Defendant the Note aforeſaid, that he, this Defendant, had given to the ſaid *L. M.* and to the beſt of this Defendant's Remembrance, alſo Letters of Adminiſtration

ſtration to his ſaid Brother's Eſtate, and demanded the Money ſo as aforeſaid depoſited in this Defendant's Cuſtody; whereupon this Defendant having before that Time lent the ſaid *L. M.* ſome ſmall Sums of Money, and made ſeveral Diſburſements for his Account, which were allowed to this Defendant by the ſaid *G. M.* and were really due to this Defendant from the ſaid *L. M.* at his Deceaſe, this Defendant did pay and ſatisfy to the ſaid *G. M.* all the reſt of the Money depoſited in his Hands as aforeſaid, and had his former Note delivered him up, and the ſaid *G. M.*'s Receipt for the whole Sum ſo depoſited as aforeſaid. Nor did this Defendant ever know, or was acquainted that the ſaid *L. M.* made any Will or Executor but by the Complainant's Bill, nor hath he, or ever had, or took into his Poſſeſſion any Goods, Money, or other Things of the ſaid *L. M.* ſave the Sum aforeſaid, or any other Perſon ever had the ſame, or any of them, by this Defendant's Direction or Order: And as to the Diſcovery of what the ſaid Money was, and in Bar of any Relief to be had in this Honourable Court againſt this Defendant, for the ſaid Sum of Money ſo depoſited as aforeſaid; this Defendant for Plea ſaith, That he did really and *bona fide* ſatisfy the ſaid *G. M.* for the ſame, and that he did then inform this Defendant that he was Adminiſtrator to the ſaid *L. M.* and that the ſaid *L. M.* made no Will; and this Defendant did verily believe that he was the Perſon who ought of Right to receive the ſame, and therefore conceives that he is not liable to diſcover in Equity the

the Sum of Money which he hath really ſatiſfy'd and paid to him that had, as far as this Defendant knew, the only Right to the ſame; and this Defendant further ſaith, that after the ſaid Money was depoſited in his Hands, he did ſtay and was reſident within this Realm of *England* until, *&c.* in the Year, *&c.* during which Time there was no Bill, Action, or Suit commenced againſt this Defendant, to the Knowledge of this Defendant, or ſince, until this preſent Bill exhibited in *Eaſter-Term* laſt; and therefore this Defendant pleaded the Statute of Limitations, and as this Caſe is, craveth Benefit thereof; and this Defendant alſo ſaith, that he knoweth not what Will the ſaid *S. M.* made, nor what Legacies ſhe bequeathed, nor whether ſhe made any Will, or any Executor, but confeſſeth, *&c.* All which Matters, *&c.* this Defendant is ready to aver and prove, and demands the Judgment of this Honourable Court, whether he ſhall Anſwer to the Matters herein pleaded to; and prays to be diſmiſs'd, *&c.*

An Anſwer to Part, and Demurrer to other Part of a Bill.

ALL Advantages, *&c.* for Anſwer to ſo much of the Complainant's Bill as this Defendant is adviſed is material for him to make Anſwer unto, this Defendant anſwereth and ſaith, That by the falſe Inſinuations and Suggeſtions of the Complainant, who perſuaded this Defendant, that he, this Defendant, had a good Title at Law to a conſiderable Perſonal Eſtate,

Eſtate, late of *J. B.*'s by the Will of the ſaid *J. B.* lately deceaſed, the Complainant ſome Time ſince told this Defendant, that if he would employ the Complainant as his Clerk in Chancery, he would engage this Defendant ſhould recover a very conſiderable Sum of Money; which Perſwaſions and Aſſurances this Defendant giving Belief to, he did employ the Complainant as his Clerk in Court, and did promiſe the ſaid Complainant to pay him all ſuch Fees as ſhould be juſtly due to the ſaid Complainant, and alſo all ſuch Sums of Money as the Complainant ſhould expend on this Defendant's Account in the ſaid Cauſe; after which the Complainant did direct and bring a Bill in this Honourable Court, in the Name and on the Behalf of this Defendant, againſt the Perſons mention'd in the Complainant's Bill of Complaint, as in the ſaid Bill is ſet forth; to which the ſaid Parties put in their Anſwer, and after the ſaid Anſwer this Defendant was adviſed to move to have the ſaid Bill diſmiſs'd with, *&c.* Coſts, which by Order of this Honourable Court was ordered to be diſmiſs'd accordingly, ſo that this Defendant had no other Advantage by the ſaid Suit, than to ſpend his Money and Time; and this Defendant further ſaith, that from Time to Time, he, this Defendant, did pay to the Complainant all Sums of Money that the Complainant did expend in the Proſecuting the ſaid Suit, as well as all the Fees that were demanded by, or due to the Complainant; and the Complainant was ſo far from expending his own Money, or having any due to him in proſecuting

ting the Cauſe, that this Defendant, at the Requeſt and Intreaty of the Complainant, was ſometimes forced to let the Complainant have Money before-hand to proſecute the ſaid Suit, the Complainant not being able to defray the Charges with his own Money, ſo that this Defendant verily believes he hath paid the ſaid Complainant more than upon a juſt Account would appear to be due to him; and yet nevertheleſs the Complainant to vex, trouble, and put this Defendant to Charges, did bring an Action in, *&c.* Court for 10 *l.* as due for his Fees and Expences in the ſaid Suit, to which Action the Defendant appeared, and the Complainant was nonſuited; but notwithſtanding this Defendant did receive a Bill or Note from the Complainant, which ſaid Note or Bill is under the Hand of the ſaid Complainant, by which he demands the Sum of 6 *l.* as due to him for Fees and Expences in the ſaid Cauſe, which Bill is annexed to this Defendant's Anſwer, and which the ſaid Defendant prays may be taken as Part of his Anſwer, the Bill or Note being in this Defendant's Cuſtody; and now for that the Complainant by his Bill of Complaint demands the Sum of 13 *l.* or thereabouts to be due to him on his Bills delivered to this Defendant; and whereas by the aforeſaid Bill it may and will appear that the Complainant's Demands were but 6 *l.* for theſe Reaſons this Defendant doth demur to the ſaid Bill; and as the Cauſe is of ſo ſmall Value and Conſequence, that it is beneath the Dignity of this Honourable Court to take any Cognizance thereof, therefore this Defendant doth

doth demur, and humbly prays to be hence diſmiſs'd, *&c.* and denies all Manner of Combination in the Bill charged; *without that*, that, *&c.*

Of Exceptions *to Anſwers in Chancery, and* further Anſwers.

IF an Anſwer in Chancery be inſufficient, irregular or miſtaken, in one or more Points, the Complainant may except thereto, and oblige the Defendant to put in a further and better Anſwer.

The Exceptions muſt ſhew ſome particular Point or Points wherein the Anſwer is defective; and if the Inſufficiency be furmiſed only in general, the Court will not refer it to be examined: Alſo if the Anſwer be good to a common Intent, the Plaintiff is to reply and prove the Matter of his Bill to be true, and not inſiſt on the Inſufficiency of the Anſwer. But this muſt be intended of Things publickly done, whereof there may be a general Notice and Cognizance; for of Matters done by the Defendant privately, or reſting in his own Knowledge only, he ought to anſwer particularly and certainly.

An Anſwer being filed in Term, the Plaintiff the ſame Term, or within eight Days after, is to deliver his Exceptions in Writing (if he hath any) to the Counſel, whoſe Hand is to the Anſwer, or to the Defendant's Clerk in Court: If the Anſwer be filed in the Vacation, the Plaintiff

hath Time till eight Days after the Beginning of the next Term to put in Exceptions; and in neither Caſe they may not be put in afterwards, without moving the Court, or Conſent on the other Side. And if the Defendant, within eight Days after the Delivery of the Exceptions, do amend his Anſwer, or agree with the Plaintiff, his Counſel, *&c.* to amend it accordingly, and pay 20 *s.* Coſts, the Plaintiff ſhall go on and reply; or the Defendant may in that Time ſatisfy the Plaintiff of the Invalidity of his Exceptions. But in Caſe the Defendant fail to do the ſame; or puts in a ſecond or other inſufficient Anſwer, the Plaintiff may on Motion get ſuch firſt or other Anſwer referred to a Maſter for the Inſufficiency; and if the Anſwer be reported inſufficient, and ſo ruled, the Defendant ſhall pay 40 *s.* Coſts, and make a better Anſwer; but if it is reported good, the Plaintiff ſhall pay the like Coſts, and the Anſwer ſhall ſtand. *Ord. Canc.* 124.

If the firſt Anſwer be certified inſufficient, and ruled ſo, the Defendant ſhall pay 40 *s.* Coſts, as aforeſaid, if the Anſwer was put in in Perſon; and if it came in by Commiſſion, the Defendant is to pay 50 *s.* Coſts, and no new Commiſſion ſhall be awarded for taking a ſecond Anſwer, till the Coſts of the Firſt are paid, and unleſs it be by Order upon Affidavit made of the Party's Inability to travel, or other good Cauſe to ſatisfy the Court touching the Delay, *&c.* If a ſecond Anſwer be reported inſufficient, in any of the Points formerly certified, the Defendant ſhall pay 3 *l.* Coſts: On a third Anſwer reported

ported inſufficient, he ſhall pay 4 *l.* Coſts: And on a fourth inſufficient Anſwer, he ſhall pay 5 *l.* Coſts, and be examined upon Interrogatories to the Points certified inſufficient; and ſhall be committed until he hath perfectly anſwered thoſe Interrogatories and paid the Coſts, in Reſpect of the great Vexation and Delay to the Plaintiff. *Ibid.*

When an Anſwer is reported inſufficient, the Complainant may have one *Subpœna* for Coſts, and another to make a better Anſwer; or he may have one *Subpœna* for both. A Defendant firſt put in an inſufficient Plea, it being over-ruled, and after that put in three inſufficient Anſwers; and yet the Court did not think fit to commit him, as they would have done if he had put in four inſufficient Anſwers. 1 *Canc. Caſ.* 179.

The Plaintiff cannot refer Exceptions to a firſt inſufficient Anſwer, 'till eight Days after the Exceptions are filed; but upon a ſecond Anſwer reported inſufficient, they may be referred immediately: And he that excepts to an Anſwer is tied to no certain Time to get it referred, unleſs a ſpecial Order be for that Purpoſe obtained, *&c.* The Party excepting muſt depoſit 5 *l.* with the Regiſter, which, if the Exceptions are over-ruled, is to be paid to the other Party; but if they are allowed, then it ſhall be paid back again to him that depoſited it: And he that excepts to a Maſter's Report touching the Sufficiency of an Anſwer, *&c.* for every Exception which ſhall on arguing be over-ruled or declared frivolous, he ſhall pay 20*s.* *&c.* which ſhall be paid over and above the 5 *l.* depoſited, if the Report

Report be affirmed; or out of the 5 *l.* tho' the Report be altered. Yet where the Exceptions, or any of them are found true and allowed, the other Party ordinarily pays 5 *l.* Costs; tho' it is in the Discretion of the Court to order more, or that each shall bear their own Costs; and if they are found against the Defendant, he must pay the said Costs and put in a better Answer.

Exceptions to Answers shall not be received unless filed, and Notice is to be given to the Clerk in Court of the other Side. And when these Exceptions are referred to a Master, which are commonly on Motion, to examine and report his Opinion thereon to the Court; the Plaintiff must serve the Defendant with a Warrant to attend, which must be served on the Defendant or his Clerk in Court, two Days before arguing the Exceptions; and on Non-appearance of the Defendant, the Plaintiff may issue out a peremptory Writ, and proceed *ex parte*, if he does not then appear. The Insufficiency appearing on the Exceptions is to be insisted upon; and no new Exceptions shall be put in: And when the Exceptions are heard, and the Master hath made his Report, the said Report shall be conclusive, except either Party take Exceptions to the same, as they may do, and have it argued in Court, on depositing the usual Sum with the Register for Costs, *&c.*

A Plaintiff excepted to the Defendant's Answer, and the Exceptions being referr'd, the Master certified the Answer insufficient in the Points excepted to; upon which the Defendant

fully anſwer'd to the Charge of the Bill; (but in Truth the Exceptions were longer than the Bill: The Maſter upon a Reference of the ſecond Anſwer, reported that Anſwer inſufficient, and the Defendant excepted to the Report, and inſiſted by his Counſel, that he had anſwered well to the Matters of the Bill; but it was ruled, that as the Defendant did not except againſt the firſt Report, but had ſince anſwered, he had admitted he ought to anſwer to all the Matters of the Plaintiff's Exception. *Mich.* 16 *Car.* 2.

No Exceptions may be ordinarily taken to an Anſwer in Chancery after a Replication put in; for by the Plaintiff's Replication he admits the Anſwer ſufficient: Tho' in ſome Caſes the Replication hath been ordered to be taken off the File, and Exceptions permitted to be put in.

Vide Reports of and *References* to Maſters in Chancery.

Exceptions to an Anſwer in Chancery.

In Canc. Inter *G. E.* Quer. & *P. H.* & al. Def.

Exceptions taken and filed in this Court by the ſaid G. E. *the Complainant, to the Inſufficiency of the Anſwer of the ſaid Defendant* P. H. *put into the ſaid Complainant's Bill of Complaint.*

Bill. THE End and Scope of the Plaintiff's Bill is to ſet aſide a fraudulent Will ſet up by the ſaid *P. H.* the Defendant, and to have

have a particular Account of the ſeveral Eſtates of *J. J.* and *R. J.* his Wife, deceaſed, the Complainant being entitled to the ſame as the neareſt Relation of the whole Blood, and Heir at Law to the ſaid *R. J.*

Anſwer. To which Bill, the ſaid Defendant hath put an imperfect, evaſive and inſufficient Anſwer, not giving any particular Account of either of the Eſtates of the ſaid *J. J.* or *R. J.* as is required by the Complainant's Bill; but inſiſts upon a pretended Title to the ſame, by Virtue of a falſe and fraudulent Will, pretended to be made by the ſaid *R. J.* in her Life-time; which Will, if any ſuch there be, the Plaintiff avers and is ready to maintain and prove that the ſame was ſurreptitiouſly obtained, illegally executed, and unduly proved, with an Intent to defraud the ſaid Complainant of the ſaid *R. J.*'s Eſtate; and to which ſaid Anſwer, the ſaid Complainant doth except, as inſufficient in the ſeveral Points following, *viz.*

1ſt *Exception.* Firſt, The Plaintiff excepts againſt the ſaid Anſwer as inſufficient, for that the ſaid Defendant by her Anſwer pretends to be a Relation of the ſaid *R. J.* but doth not ſet forth her Pedigree, nor how near of Blood or related ſhe was to the ſaid *R. J.* which ſhe ought to have done.

2d *Exception.* Secondly, The Plaintiff excepteth againſt the ſaid Defendant's Anſwer as evaſive and inſufficient; for that ſhe the ſaid Defendant doth not therein ſet forth, whether the ſaid *R. J.* did not make her Laſt Will and Teſtament

in Writing, and the Plaintiff Executor thereof, and whether she did not at the same Time, &c. to which the Defendant makes no Answer, but that she believes, &c. without setting forth, &c. all which is required by the Plaintiff's Bill.

3d *Exception.* Thirdly, The Plaintiff excepts against the said Defendant's Answer as insufficient, for that she, the said Defendant, doth not set forth how she procured and obtained the fraudulent Will in her Favour to be executed by the said *R. J.* and who were the Advisers therein; all which she ought to have done, being also required by the Bill.

4th *Exception.* Fourthly, The Plaintiff excepteth against the said Defendant's Answer as insufficient, for that the said Defendant doth not set forth therein, what Gold, Silver, Plate, Rings, Jewels, Bills, Bonds, Leases, Mortgages, Judgments, Extents, Household-Goods, and Utensils of Household-stuff, the said *R. J.* died possessed of, with the true Values of the same, and annex a Schedule of the Particulars thereof to her Answer; which she ought also to have done, it being required by the Complainant's Bill.

For all which Reasons, the Plaintiff excepts against the said Defendant's Answer as imperfect, evasive, and insufficient, in the Particulars aforesaid. And therefore prays, that the Defendant may amend and put in a better Answer as to the same, and give in a full, perfect and sufficient Answer to the Complainant's said Bill of Complaint.

Another

Another Form of Exceptions to an Answer.

THE End of the Complainant's Bill is to be paid for his Care, Labour and Pains, in soliciting, on Behalf of the Defendant, a Cause formerly depending in this Court between the said *M. B.* then Complainant, and one *P. R. & al.* Defendants, and to have such Disbursements and Fees allowed him as this Complainant laid out and expended therein, or are otherwise due to him for the soliciting and managing the said Cause; and to that Purpose, the Bill sets forth and chargeth, That the Complainant having for about two Years solicited and managed the said Suit, he the said *P. R.* was afterwards on or about, *&c.* by the extraordinary Pains and Care of this Complainant, brought to Terms of Agreement with the said *M. B.* and induced to end and determine the said Cause to the good Liking and Satisfaction of the said *M. B.*

1st *Exception.* To which Allegation and Charge of the said Bill, the said Defendant doth not give any Manner of Answer, but uses railing and scandalous Language against the said Complainant touching the same; and therefore the Complainant excepts to the said Answer as insufficient, impertinent and scandalous, in that Particular.

The said Bill also sets forth and charges, That the said Defendant *M. B.* having demanded a Bill of Costs of the Complainant, and the Complainant delivering the same to her, she the said Defendant, by Motion of this Court, on or a-

bout, *&c.* laſt, got the ſaid Bill referred by Order of this Court to Mr. *H.* one of the Maſters of the Court; to be taxed.

2d *Exception.* To which Charge in the Complainant's Bill, the ſaid Defendant hath given no Manner of Anſwer, which this Complainant conceives ſhe ought to have done, for that the ſaid Bill charges the ſaid Order of Reference to be made upon her own Motion; and therefore this Complainant excepts to the ſaid Anſwer as imperfect and inſufficient in that Particular alſo.

And the ſaid Bill doth further ſet forth and charge, That the ſaid Defendant did afterwards, *viz.* on the Day, *&c.* ſerve the ſaid Complainant with a Summons to attend the ſaid Maſter, in order to tax the ſaid Complainant's Bill of Coſts, and that the ſaid Defendant attending accordingly, ſhe, the ſaid Defendant, refuſed to proceed in Taxing the ſaid Bill, contrary to the Order of the Court made upon her own Motion.

3d *Exception.* To which ſaid Charge in the ſaid Bill of Complaint, the ſaid Defendant hath given no Anſwer, but that, *&c.* whereas the Complainant humbly conceives ſhe ought to have particularly anſwered the Charge of Service of the ſaid Summons, the ſame being by the Complainant's Bill charged on her as her own Act, and that ſhe afterwards refuſed to proceed in Taxing the ſame, contrary to the Order of this Court made on her own Motion; and therefore this Complainant excepts to the ſaid

ſaid Anſwer as imperfect, *&c.* in that Particular alſo.

In all which ſaid Particulars, this Complainant conceives the ſaid Anſwer to be imperfect, evaſive, and inſufficient, and therefore prays he may have his Coſts awarded him by this Court, and that the ſaid Defendant may be compelled by Order of this Honourable Court, to put in a further full and ſufficient Anſwer to the Complainant's ſaid Bill of Complaint.

And he ſhall pray, &c.

A further Anſwer to a Bill brought to ſet forth purchaſe Deeds, *&c.* on Exceptions taken to the former Anſwer.

The further Anſwer *of* B. D. *Eſq; one of the Defendants to the Bill of Complaint of* E. M. *Complainant.*

THIS Defendant, for further Satisfaction to this Honourable Court, and for Anſwer to the ſeveral Exceptions taken by the Complainant to his former Anſwer, ſaith, as he is adviſed, that the former Anſwer by him put in to the ſaid Complainant's Bill is ſufficient to all the material Charges thereof, or therein contained; howbeit this Defendant for further Anſwer thereunto, doth ſay, That he did not know, hear, or was inform'd, until ſome few Days before the Death of *L. M.* that the Deeds or Conveyances to *E. D. &c.* were executed

by him; nor doth this Defendant know, or ever heard, or was informed, of the Time when they were ſo executed by him, nor how long before the Purchaſe-money was paid, *&c.* And this Defendant further ſaith, That he doth not know, or hath heard, that the ſaid *E. D.* did refuſe or decline the ſaid Purchaſe, but this Defendant confeſſeth he was inform'd that the ſaid *E. D.* having Money ready in a Goldſmith's Hands, intended for the ſaid Purchaſe, he, the ſaid *E. D.* refuſed to pay the ſame 'till, *&c.* had joined in the Deeds of Conveyance to him, but the preciſe Time when this Defendant was ſo inform'd, or by whom, this Defendant doth not remember; and this Defendant doth not know, hath heard, or been inform'd, that the ſaid *E. D.* did, on or about the Time in the Bill mentioned, deliver up any of his Goldſmith's Notes, and take others to himſelf, or diſpoſe of the ſaid Money, or any Part thereof, for other Purpoſes, or that he did not take any Goldſmith's Notes afterwards; but this Defendant confeſſes he hath heard and believes, that the ſaid *E. D.* did refuſe to take any more Goldſmith's Notes payable to the ſaid, *&c.* till the ſaid *E. D.* and the ſaid, *&c.* had ended a Diſpute between them, about the Intereſt of Money formerly lent; and this Defendant doth aver and ſay, that after ſuch Account of Intereſt was ſettled, he the ſaid *E. D.* did take and receive divers Goldſmith's Notes payable to the ſaid, *&c.* And this Defendant particularly ſaith, That on or about, *&c.* laſt, when the ſaid *E. D.* came to his, this Defendant's Shop, and appointed him

to

to meet him the ſame Day in the Afternoon at, *&c.* about receiving the Money aſſigned to him by the ſaid, *&c.* he the ſaid *E. D.* then told this Defendant, that he had taken Goldſmith's Notes for the Sum of, *&c.* Part of the ſaid Purchaſe-money, but this Defendant knows not, nor hath heard, otherwiſe than by the Complainant's ſaid Bill, when the Diſpute about Intereſt between the ſaid, *&c.* and the ſaid *E. D.* were ended; and this Defendant denieth, that he had any private or other Intimations from the ſaid *E. D.* or any other, how the ſaid Purchaſe proceeded, or what Likelihood there was of accommodating any Diſputes relating thereunto 'till in or about the ſaid Month of, *&c.* laſt; and this Defendant further ſaith, That after the ſaid Day, *&c.* of the ſaid Month, and not before, he, this Defendant, did, upon the Order of the ſaid, *&c.* ſeveral Times requeſt the ſaid *E. D.* to pay the ſaid, *&c.* Money to him, and this Defendant hath heard and believes, that Mr. *R. W.* had oftentimes before preſſed the ſaid *E. D.* to pay the ſaid Money to the ſaid, *&c.* But this Defendant doth deny, that either this Defendant, or the ſaid *R. W.* to this Defendant's Knowledge or Belief, or any other Perſon or Perſons whatſoever, did either before or after the Death of the ſaid, *&c.* offer to the ſaid *E. D.* any Manner of Abatement, Allowance or Gratuity, if he would pay the ſaid Money, tho' this Defendant believes that the ſaid *E. D.* was more cautious and fearful of Trouble than he had juſt Reaſon for, and that made him delay for ſome Time, and at length refuſe to pay the

the ſaid Money, altho' he ſafely might and ought to have paid the ſame as this Defendant is adviſed and humbly conceives; and this Defendant denies, *&c. Without that*, that any other Matter or Thing in the Complainant's ſaid Bill of Complaint contained, not herein and hereby, and in and by this Defendant's former Anſwer, anſwer'd unto, confeſſed or avoided, traverſed or denied, is true to the Knowledge or Belief of this Defendant; all which Matters and Things this Defendant is ready to aver, juſtify, maintain and prove, as this Honourable Court ſhall award; and therefore prays, as in and by his former Anſwer he hath already pray'd.

A further Anſwer relating to a Conveyance of a Manor and Lands, made by a Perſon committed to Priſon on an Accuſation of Crimes, and his Truſtees, *&c.*

The further Anſwer of, &c. *to the Bill of Complaint of*, &c.

THE ſaid Defendant, ſaving to himſelf, as in his former Anſwer he hath already ſaved, for further Anſwer to the ſaid Complainant's ſaid Bill of Complaint ſaith, That an Act of Parliament being paſſed for the Sale of the Eſtate of Sir *A. S.* deceaſed, for the Payment of ſeveral Sums of Money in the ſaid Act particularly mentioned, he, this Defendant, did contract for the Purchaſe of the Manor of, *&c.* and other Lands and Tenements in the Pariſh of, *&c.* in the Bill mentioned, for the Sum of 5000*l.* which

which was by the Truſtees in the ſaid Act named, appointed to be paid in ſuch Manner as in the Complainant's Bill is ſet forth, and in particular the Sum of, *&c.* was to be paid to *J. S.* Eſq; ſince deceaſed; and this Defendant further ſaith, that Conveyances were executed accordingly by the ſaid Sir *A. S.* and the Truſtees, on or about, *&c.* and that the ſaid Sir *A. S.* was the ſame Day, to the beſt of this Defendant's Remembrance, committed to the *Tower of London*, but the Particulars of the Accuſation, or the Crimes laid to the Charge of the ſaid Sir *A. S.* this Defendant knows not, but hath heard that the ſaid Sir *A.* was not guilty of the Matters whereof he was accuſed; and this Defendant believeth he may have heard that the ſaid Sir *A.* was bailed out upon Security to appear at the King's Bench, as in the ſaid Bill is mentioned; but this Defendant believes the ſaid Sir *A.* was not abſolutely diſcharg'd until, *&c.* and this Defendant being adviſed by his Counſel, that he could not ſafely pay his Purchaſe-money 'till the ſaid Sir *A.* was finally diſcharg'd of his ſaid Impriſonment: He did not pay any Part of the Purchaſe-money until, *&c.* laſt; tho' this Defendant believes, that the ſaid Truſtees and their Counſel might at a Meeting before, at the Houſe of, *&c.* preſs this Defendant to quit the ſaid Purchaſe, and reconvey his ſaid Eſtate, affirming there were ſeveral Perſons that were deſirous to buy the ſame, and give as much or more than this Defendant, notwithſtanding ſuch Accuſation and Impriſonment of the ſaid Sir *A. S.* But this Defendant acknowledgeth he did refuſe to

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reconvey the ſaid Eſtate, having kept the Purchaſe-money in his Hands a conſiderable Time, and being then ready and willing to have paid the ſaid Money, if he could have done it ſafely; and this Defendant believes he might be told, that a Bill ſhould be forthwith filed againſt him, to compel him to proceed to quit the ſaid Purchaſe; and this Defendant further ſaith, that it is true, that ſome Time after, *&c.* this Defendant was inform'd, that Mr. *A. C.* had commenc'd a Suit in this Court againſt this Defendant, to compel this Defendant to pay him his Share of the Purchaſe-money, or reconvey the ſaid purchaſed Premiſſes to the ſaid Truſtees, or to ſome ſuch Effect, as in the Bill; and he, this Defendant, believes he might be ſerved with Proceſs to appear and anſwer the ſaid Bill, and that an Attachment might iſſue againſt this Defendant for not anſwering the ſame; but upon this Defendant's declaring to Mr. *F.* the Attorney in the Suit, that this Defendant doubted not but to agree the ſaid Matter, or to that Effect, he promiſed this Defendant, that no Advantage ſhould be taken thereof, and ſoon after the ſaid Matter was agreed, and the ſaid Mr. *A. C.* was paid his Proportion or Share of the ſaid Purchaſe-money accordingly; and this Defendant ſaith, that by Reaſon of ſuch Diſputes, the perfecting the Purchaſe was delay'd, and there ariſing farther Conteſts between the ſaid Sir *A. S.* and this Defendant touching, *&c.* and *S. C.* in the Bill named, claiming ſome Part of the Purchaſe-money by Virtue of, *&c.* And the ſaid Sir *A. S.* at a Meeting at, *&c.* on or about, *&c.* did then,

then, and not before, forbid this Defendant to pay any of the Purchaſe-money to the ſaid, *&c.* And this Defendant did thereupon promiſe the ſaid Sir *A. S.* that he would not part with any of the Money out of his Hands, without firſt acquainting him the ſaid Sir *A.* or the Truſtees, or ſome of them therewith; but this Defendant doth not remember that the ſaid Sir *A. S.* or the Truſtees, ordered, *&c.* And this Defendant further ſaith, that a ſecond Meeting being appointed on or about the Day of, *&c.* laſt, in order to ſettle the Differences between the ſaid Sir *A. S.* and this Defendant, and in order to pay the Purchaſe-money, as was appointed to be paid by the Deeds of Conveyance; this Defendant, to prevent Diſputes for the future, and that he might quietly enjoy the Eſtate purchaſed, did allow the ſaid Sir *A. S.* a conſiderable Sum of Money for the Intereſt of the whole Purchaſe-money, *&c.* And this Defendant ſaith, that all Diſputes between the ſaid Sir *A. S.* and this Defendant were adjuſted that Day, *&c.* and at the ſame Time this Defendant did pay Mr. *A. C.* and *S. C.* their Proportions of the Purchaſe-money, by delivering them, *&c.* and this Defendant knows nothing of their refuſing to accept him for their Pay-maſter; and this Defendant ſaith, that the Night the ſaid Diſputes were ended, and the Money paid as aforeſaid, and not before, the ſaid *A. C.* and *S. C.* did execute the ſaid Conveyances, and the ſaid Sir *A. S.* and the ſaid Truſtees did then conſent the ſaid Conveyances ſhould be delivered to this Defendant, he, this Defendant, not deſiring to have them before;

fore; and this Defendant did then and thereupon execute a Counterpart thereof; and this Defendant believes, that the ſaid Conveyances, after they were thus executed, were left in the Hands of, *&c.* and this Defendant never demanded the ſame 'till after he had paid all his Purchaſe-money, except ſuch Part thereof as belonged to, *&c.* and knows of no Agreement that the ſaid Conveyances ſhould lie in the Hands of the ſaid, *&c.* in Truſt for all the Parties, nor remembers that there was any Diſcourſe to ſuch Effect, or any ſuch Thing mentioned; and this Defendant doth not remember any Diſcourſe between the ſaid Sir *A. S.* and the ſaid, *&c.* in the Bill mentioned, or any of them, about keeping private, or concealing from the ſaid, *&c.* what Money was appointed to be paid to him, nor what Debates might ariſe about the ſame; but this Defendant confeſſeth, that upon his asking the ſaid Sir *A.* or ſome of the Company with him, what he ſhould do with the Sum of, *&c.* in his Hands, he, or they, or ſome of them, told him, this Defendant, he muſt keep it 'till further Order, or to that Effect, and believes that the ſaid Perſons, or ſome of them, might then ſay, that the ſaid Money was Part of the Portion of, *&c.* but doth not remember that the ſaid Perſons, or any of them, ſaid that the ſaid, *&c.* had a Right to retain the ſame, in regard there was no Settlement made upon him the ſaid, *&c.* *Without that*, that, *&c.*

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A further Answer to a Bill brought for Recovery of a considerable Estate to the Plaintiff as Heir at Law, which Estate was given by Will to the Defendant, reciting Proceedings at Law, and setting forth all Deeds, Writings, Settlements, *&c.*

The further Answer of, &c. *Defendant, to the Bill of Complaint of,* &c. *Complainant.*

THIS Defendant saving to himself the Benefit and Advantage of Exception to the Insufficiencies, Errors and Imperfections, in the said Complainant's Bill contained, in such Manner as he hath done in and by his former Answer, for further Answer to the Complainant's said Bill of Complaint saith, that he hath heard and believes that *E. R.* Grandfather of *H. R.* Esq; in the Bill named, by Indenture tripartite bearing Date, *&c.* made between him the said *E. R.* and *K.* his Wife of the first Part, Sir *F. R.* Knight, Son and Heir apparent of the said *E. R.* Dame *H.* his Wife, and *G. R.* Brother of the said Sir *F. R.* of the second Part, and Sir *H. S.* of, *&c.* Knight, *F. H.* and *W. C.* of, *&c.* Esqs; of the third Part, The said *E. R.* and *K.* his Wife, for and in Consideration of a Marriage then had and solemniz'd between the said Sir *F. R.* and *H.* and in Consideration of the Sum of, *&c.* to him the said *E. R.* paid by the said Sir *H. S.* and for a competent Jointure to be made and assured to the said Dame *H.* and for and in Consideration of the natural Love and Affection

which they the ſaid *E. R.* and *K.* had and did bear to the ſaid Sir *F. R.* their Son, They the ſaid *E. R.* and *K.* his Wife did grant, enfeoff and confirm to the ſaid Sir *H. S. F. H.* and *W. C.* all that the Manor of, *&c.* with the Rights, Members and Appurtenances thereof, and all that the capital Meſſuage, Site, Manor-houſe and demeſne Lands, and alſo all Lands, Tenements and Hereditaments of and belonging to the ſaid Manor, and all that the Rectory and Parſonage of, *&c.* with the Rights, Members and Appurtenances thereof, and the Advowſon and Right of Patronage of the Vicarage of the Church of, *&c.* aforeſaid, ſituate, lying and being in, *&c.* (excepting unto the ſaid *E. R.* and his Heirs the Farm of, *&c.* with the Appurtenances thereunto belonging, then in the Tenure of, *&c.*) to hold unto the ſaid Sir *H. S. F. H.* and *W. C.* their Heirs and Aſſigns for ever, to the Uſes, Intents and Purpoſes therein after declared, and herein after ſet forth, (that is to ſay) as for and concerning the ſaid Manor of, *&c.* with the Rights, Members and Appurtenances, and the ſaid capital Meſſuage, Site, Manor-houſe and demeſne Lands, and all Houſes, Lands, Tenements, and other the Premiſſes to the ſaid Manor belonging, to the Uſe of the ſaid Sir *F. R.* for and during the Term of his natural Life, without Impeachment of Waſte, and after his Deceaſe to the Uſe of the ſaid Dame *H.* for the Term of her natural Life for her Jointure, and after the Deaths of the ſaid Sir *F. R.* and Dame *H.* to the Uſe of the Heirs of the Bodies of the ſaid Sir *F. R.* and Dame *H.* between them

lawfully to be begotten; and for Default of such Issue, to the Use of the right Heirs of the said Sir *F. R.* for ever; and as for and concerning the said, *&c.* to the Use of, *&c.* and the said *E. R.* Sir *F. R.* and *G. R.* did thereby covenant with the said Sir *H. S. F. H.* and *W. C.* that the said *E. R.* Sir *F. R.* and *G. R.* or one of them were lawfully seized of the said Manor, Lands and Premisses, (except before excepted) of an absolute Estate of Inheritance in Fee-simple or Fee-tail respectively, according to their several Grants thereof; and the said *E. R.* &c. did covenant with the said Sir *H. S. F. H.* and *W. C.* that they the said *E. R.* &c. or one of them had lawful Authority to convey the said Manor and Premisses, (except the said Farm, *&c.*) to the said Sir *H. S. F. H.* and *W. C.* their Heirs and Assigns, to the Uses before expressed; and that the same then were and at all Times thence after should remain to the Persons to whom any Use thereof was limited, free from all Incumbrances, (except Grants by Copy of Court-Roll and Leases made by the said *E. R.* and his Ancestors for one, two or three Lives, *&c.*) And the said *E. R.* did thereby also covenant, that he, *K.* his Wife, Sir *F. R.* and *G. R.* would at all Times thereafter within the Space of seven Years, at the Request of the said Sir *H. S. F. H.* and *W. C.* do any other reasonable Act for the further Assuring of the said Manor and Premisses to the Uses before-mentioned; and it was thereby covenanted between all the Parties, that all Fines, Feoffments, and other Assurances, thereafter to be had and made of the said Premisses,

ſhould be deemed and taken to be to the Uſes in the ſaid Indenture limited and declared, and to no other Uſe or Purpoſe whatſoever; and in the ſame Indenture there is a Proviſo for enabling the ſaid Sir *F. R.* to make Leaſes of any Parts of the ſaid Manor and Premiſſes; under ſuch Reſtrictions as are therein mentioned; and alſo one other Proviſo for enabling the ſaid Dame *H. R.* after the Death of the ſaid Sir *F. R.* if ſhe ſhould him ſurvive, during her natural Life, in like Manner to make Leaſes, *&c.* and alſo, *&c.* and this Defendant ſaith, that by the ſaid Indenture it appears the ſame was ſealed and delivered by the ſaid *E. R. K. R.* Sir *F. R. G. R.* Sir *H. S. F. H.* and *W. C.* and the Names of the Witneſſes thereto endorſed thereon, are, *&c.* as by the ſaid Indenture and Indorſement thereon now remaining in this Defendant's Cuſtody, whereto this Defendant for more Certainty refers himſelf, will more fully appear; and this Defendant believes, that a Fine *Sur Conuzance de droit come ceo*, &c. was levied in, *&c.* Term, in the Year of the Reign, *&c.* between the ſaid Sir *H. S. F. H.* and *W. C.* Plaintiffs, and the ſaid Sir *E. R.* and *K.* his Wife, Sir *F. R.* and *G. R.* Deforceants, of the Manor of, *&c.* aforeſaid, as by the Records of the ſaid Fine, whereto this Defendant for his greater Certainty refers, may appear; and this Defendant ſaith, that the ſaid *E. R.* being ſeized in Fee-ſimple of the Manors or reputed Manors of, *&c.* did as this Defendatns believes, and doubts not but to prove, duly make and publiſh his Laſt Will and Teſtament in Writing on or about, *&c.* and

thereby give and bequeath unto his Son *G. R.* all that the Manor and Farm of, *&c.* and all his Messuages, Lands, *&c.* to the said Manor and Farm belonging, subject to the Charges in the said Will mentioned, *&c.* to hold to him the said *G. R.* his Heirs and Assigns for ever, as in and by a Copy of the said Will in the Defendant's Custody, taken out of the prerogative Court of *Canterbury*, as this Defendant believes, wherein it is mentioned to be proved on or about, *&c.* and to which this Defendant refers himself, will more fully appear, by which said Copy of the said Will the Names, *&c.* were subscribed as Witnesses thereto; after the Death of which said *E. R.* the said *G. R.* being, by Virtue of the said Will, seized in Fee-simple of the aforesaid Manors of, *&c.* did on or about, *&c.* as this Defendant doubts not but to prove, make and publish his Last Will and Testament in Writing, and did thereby give to his two younger Brothers *E. R.* and *H. R.* his Lands called by the Name of, *&c.* 'till his Nephew *H. R.* Son and Heir of his eldest Brother Sir *F. R.* came to the Age of twenty-one Years; and when he fully accomplish'd that Age then his Will was that his said two younger Brothers *E. R.* and *H. R.* should surrender up to his said Nephew *H. R.* all his Lands, *&c.* aforesaid, to him and his Heirs Males lawfully begotten, for ever; but if his said Nephew *H. R.* should die without Issue, then his Will was, that the said Lands, *&c.* should return to his said two younger Brothers *E.* and *H. R.* and their Heirs for ever; and in case they failed of Issue, then to, *&c.* as by a

Copy of the ſaid laſt mentioned Will in the Defendant's Cuſtody, *&c.* more fully appears; and ſhortly after died: And this Defendant for further Anſwer ſaith, that the ſaid *E. R.* Brother of the ſaid *G. R.* did after the Death of the ſaid *G.* to wit, on or about, *&c.* as this Defendant believes, make and publiſh his Laſt Will and Teſtament in Writing, and thereby give and deviſe unto his Brother *H. R.* all his Lands, *&c.* which he then ſtood ſeized of to him and his Heirs, lying and being in, *&c.* or elſewhere whatſoever, to hold unto the ſaid *H. R.* his Heirs and Aſſigns for ever; alſo he did thereby give unto his ſaid Brother *H. R.* all that, *&c.* as in and by the Probate of the ſaid Will, remaining in this Defendant's Hands, duly proved in the Prerogative Court of *Canterbury* on, *&c.* as this Defendant believes, whereto the Names, *&c.* are mentioned to be Witneſſes, and to which this Defendant refers himſelf, will more fully appear; and this Defendant believes, and doubts not but to prove, that the ſaid *H. R.* being ſo, as aforeſaid, ſeized of the Manors of, *&c.* aforeſaid, by Indenture bearing Date, *&c.* for and in Conſideration of, *&c.* did grant, *&c.* and this Defendant further ſaith, that the ſaid *H. R.* having no Iſſue Male, and but only one Daughter, and being deſirous to ſettle his whole Eſtate upon the Iſſue Male of his Family, and to make Proviſion for Payment of his juſt Debts, and for his Daughter and other Iſſues Female, did on or about, *&c.* cauſe an Indenture to be made and prepared to the Effect following, and which is mentioned to be made between the ſaid *H. R.* by the Name of *H. R.* of,

&c. Esq; and *D.* his Wife, and *H. R.* of, *&c.* Esq; of the one Part, and *H. S.* of, *&c.* and *J. B.* of, *&c.* of the other Part, thereby setting forth, that the said *H. R.* and *D.* his Wife, for the Settling and Assuring of the Manors, Lands, Tenements and Hereditaments therein after in the said Indenture mentioned, in such Manner as therein is expressed, and herein after set forth, and for the Barring the said *D.* of all her Right and Title of Dower, which she had or might have or claim, of, in or to the said Manors, Lands and Premisses in the said Indenture mentioned, and for divers other good Causes and Considerations them thereunto moving, did grant and agree to and with the said *H. S.* and *J. B.* their Heirs and Assigns, that the said *H. R.* and *D.* his Wife should, before the End of, *&c.* Term next ensuing the Date thereof, acknowledge and levy in the Court of *Common Pleas* at *Westminster* to the said *H. S.* and *J. B.* one or more Fine or Fines, with Proclamations thereupon according to the Course of Fines and Recoveries in that Case had and provided, of all those the Manors of, *&c.* with their and every of their Rights, Members and Appurtenances, and all Houses, Lands, *&c.* by such Name and Names, Quantity and Quality, and Number of Messuages and Acres as should be advised and required; and also, that he the said *H. R.* and *D.* his Wife, and the said *H. R.* should and would before the End of the said, *&c.* Term, ackowledge and levy in the said Court of *Common Pleas*, one other Fine with Proclamations as aforesaid, to the said *H. S.* and *J. B.*

of all that the Manor of, *&c.* and alſo all Meſſuages, *&c.* lying and being in, *&c.* and it was covenanted, and agreed and declared by and between all the ſaid Parties to the ſaid Indenture, that the ſaid Fine ſo to be levied by the ſaid *H. R.* and *D.* his Wife, without the ſaid *H. R.* of the firſt mentioned Manors and Premiſſes, ſhould be and enure, and the Parties thereto their Heirs and Aſſigns, ſhould from and after the Levying thereof for ever ſtand and be ſeized thereof, to the only Uſes, Intents and Purpoſes thereafter mentioned and expreſſed, and to none other, (that is to ſay) to the Uſe and Behoof of the ſaid *H. R.* for and during, *&c.* and from and after his Deceaſe, to the Uſe of ſuch Perſon and Perſons, and for and during ſuch Eſtate and Eſtates of and in all or any Part or Parcel thereof, ſubject to ſuch Charges, Conditions and Limitations, and in ſuch Manner and Form as the ſaid *R. H.* ſhould by any Deed, or by his Laſt Will in Writing under his Hand and Seal limit and appoint; and in Default of ſuch Limitation or Appointment, to the only Uſe of the ſaid *H. R.* his Heirs and Aſſigns for ever; and as to the ſaid Fine to be levied by the ſaid *H. R.* and *D.* his Wife, and *R. H.* of the ſaid Manor of, *&c.* to the Uſe of, *&c.* as in and by the ſaid Indenture ſo prepared, remaining alſo in the Defendant's Cuſtody or Power, and whereto this Defendant refers himſelf, more fully appears; and this Defendant believes, that purſuant to ſuch Indenture and Agreement, afterwards, to wit, in the ſaid, *&c.* Term, in the ſaid Year, *&c.* a Fine *Sur Conuzance de droit*

come

come ceo, &c. was duly acknowledged by the said *H. R.* and *D.* his Wife to the said *H. S.* and *J. B.* of the Manors of, *&c.* and, *&c.* and that in the same Term another Fine *sur Conusance, &c.* was acknowledged by the said *H. R.* and *D.* his Wife and *H. R.* to the said *H. S.* and *J. B.* of the Manor of, *&c.* as by the Chirographs of the said Fines remaining in this Defendant's Custody, and whereto this Defendant refers, will more fully appear; and this Defendant further saith, and doubts not but to prove, that afterwards the said *H. R.* caused a Writing to be made, purporting his Last Will and Testament, to the Effect following, *viz.* reciting therein the said Indenture, and the said Fines, so made, had and levied of the Premisses aforesaid, and the Power reserved to himself to dispose and settle the said Premisses, the said *H. R.* by such Writing or Will for the better settling the Premisses to such Persons and for such Estates therein, according to the Power to him reserved in and by the said Indenture, did by Virtue and in Pursuance of the said Power, will, declare, limit and appoint the same in Manner following, (that is to say) he did thereby give, limit and appoint all and singular the said Manors of, *&c.* unto *J. W.* and *T. W.* of, *&c.* for and during the Term of 40 Years, to begin from and after his Decease, and fully to be compleat and ended, upon Trust and Confidence that they the said *J. W.* and *T. W.* their Executors, Administrators and Assigns, should out of the Rents, Issues and Profits thereof, satisfy and pay all the Debts which he should owe to any Person or Persons what-

ſoever; and alſo pay and ſatisfy all ſuch Sum and Sums of Money, Portions and Legacies, to ſuch Perſon or Perſons, and at ſuch Times as in and by his ſaid Laſt Will and Teſtament he ſhould direct and appoint; and for the Maintenance and Preferment of his Daughters, he thereby gave and appointed the Sums of, *&c.* the ſaid Sums or Portions to be reſpectively paid to them by his ſaid Truſtees out of the Rents and Profits of the Premiſſes as aforeſaid, ſeverally at their Ages of 21 Years, or Days of Marriage, which of them ſhould firſt happen, *&c.* and the Remainder of the ſaid Term of forty Years to, *&c.* And he did thereby further give, deviſe, limit and appoint the ſaid Manors of, *&c.* ſubject to the Leaſe and Truſt before in and by his Will declared, to and to the Uſe of the Heirs Male of the Body of him the ſaid *H. R.* lawfully begotten; and if he happened to die, having no Iſſue Male at his Death, but leaving his Wife enſient of a Son, he did limit and appoint the Premiſſes to ſuch after-born Son, and the Heirs Males of his Body lawfully to be begotten; and for Default of ſuch Iſſue, to the Uſe of his Uncle *H. R.* and the Heirs Males of his Body lawfully begotten; and for Default of ſuch Iſſue, to the Uſe of the Right Heirs of the ſaid *H. R.* for ever, *&c.* And this Defendant further ſaith, that he hath heard and believes that the ſaid Indenture and Will were either read by the ſaid *H. R.* or to him, and that he very well approved of them, and declared his Readineſs to ſeal the ſaid Indenture, and likewiſe declared the ſaid Will to be, and

that

that it ſhould ſtand for his Laſt Will and Teſtament, but before he ſigned or ſealed the ſaid Indenture, he on or about, *&c.* died ſuddenly, without any Iſſue Male of his Body begotten, leaving *F.* his only Daughter; after whoſe Death, the ſaid *H. R.* his Uncle, as this Defendant believes and doubts not but to prove, entered on the ſaid Manors of, *&c.* and afterwards, *&c.* And this Defendant ſaith, that the ſaid *F. R.* being the only Child of the ſaid *H. R.* and being unſatisfied in her Father's ſaid Will and Settlement, did in, *&c.* Term, in the Year, *&c.* cauſe ſuch Ejectment to be brought in the Court of, *&c.* for the ſaid Manors and Lands comprized in the ſaid Fine, Settlement and Will, as in this Defendant's former Anſwer is ſet forth, upon which ſuch Trial was had, and the Plaintiff became nonſuited, after full Evidence given, as in this Defendant's ſaid former Anſwer is mentioned; and this Defendant believes, and doubts not but to prove, that the ſaid *H. R.* the Uncle, after the Death of the ſaid *H. R.* to wit, in or about, *&c.* exhibited his Bill into the High Court of Chancery, againſt the ſaid *F. R.* and *J. H.* Eſq; and Dame *D.* his Wife, late Wife of the ſaid *H.* and Mother of the ſaid *F.* in Order to examine Witneſſes to prove the ſaid *H. R.*'s ſaid Will and Settlement, *in perpetuam rei Memoriam*, and to have his Debts paid, and Writings delivered, *&c.* to which Bill the ſaid *J. H.* and *E.* his Wife put in their Anſwer, and the ſaid *F. R.* by them as her Guardians put in her Anſwer, and all of them inſiſted that they were Strangers to, and knew nothing of any Will or Settlement

Settlement made by the ſaid *H. R.* and that the ſaid *H. R.* died ſeiſed in Fee-ſimple of the Premiſſes, and that the ſame deſcended to the ſaid *F.* as his ſole Child and Heir; and the ſaid *J. H.* and Dame *E.* his Wife, and the ſaid *F.* by them as her Guardians, afterwards exhibited their croſs Bill againſt the ſaid *H. R.* and the aforeſaid *J. W.* and *T. W.* in Order to defeat and ſet aſide the ſaid Will, and that in Caſe the ſaid Will ſhould appear to be a good Will, to compel the Truſtees to execute their Truſt, and pay the Debts and Legacies appointed; and ſeveral Witneſſes were examined in the ſaid Cauſes on both Sides, and Publication paſſed accordingly therein, as by the ſaid Bills and Anſwers, and other Proceedings in the ſaid Cauſes, remaining of Record in the ſaid Court of Chancery, and whereto this Defendant for more Certainty refers himſelf, will more fully appear; and this Defendant believes, and doubts not but to prove, that after Publication was paſſed, and the ſaid *F.* and her Guardians, and their Counſel or Agents had ſeen the Depoſitions, they were all ſo well ſatisfied in the ſaid *H. R.*'s Will, and the Title of the ſaid *H. R.* to the ſaid Manors and Premiſſes, that they acquieſced therein, and no further Proceedings were had in the ſaid Cauſes, and the ſaid *H. R.* afterwards paid all the Debts and Legacies of the ſaid *H. R.* amounting to many Thouſands of Pounds, and in Order to raiſe Money for that Purpoſe ſold not only ſeveral Parts of the ſaid *H. R.*'s Manors and Lands, but alſo ſeveral Lands of his own; and during his Life, which was above 20 Years after, quietly held

held and enjoyed all the Reſidue of the ſaid *H. R.*'s Eſtate, without any Pretence of Title thereto, either by the ſaid *F.* or Sir *F. P.* or any claiming under them, as this Defendant hath been well aſſured, and believes; and this Defendant believes, and doubts not but to prove, that the ſaid *H. R.* afterwards executed ſuch Deeds, and ſuffered ſuch Recovery for barring the Entail and Remainders over, and making himſelf Tenant in Fee-ſimple thereof, and alſo made ſuch Will and Diſpoſition of his real and perſonal Eſtate, as in this Defendant's ſaid former Anſwer are ſet forth, and afterwards died; and after his Death, *A. P.* Eſq; the Plaintiff *E. P.*'s Father ſo far ſubmitted to the ſaid Will, that he brought one or more Bill or Bills in Chancery to have, *&c.* and ſuch Orders and Decrees were made therein as in this Defendant's ſaid former Anſwer is ſet forth; and this Defendant claims ſuch Title as aforeſaid, by and under the Will of the ſaid *H. R.* and the ſeveral Wills and Conveyances in his this Defendant's former Anſwer mentioned, and hopes that he ſhall be permitted quietly to hold and enjoy the ſaid Manors of, *&c.* according to the ſeveral Eſtates and Intereſts therein, as in his ſaid former Anſwer is expreſſed; and this Defendant ſaith, that herein, and in this Defendant's former Anſwer, and in the Schedule hereto annexed, (which Schedule he prays may be taken as Part of this his Anſwer) he hath ſet forth a Particular of all ſuch Deeds, Wills, Fines, common Recoveries, Decrees, Writings and Evidences, as are or at any Time were in this Defendant's Cuſtody or Power,

or

or in the Cuſtody, Power or Poſſeſſion of any other Perſon for his Uſe, or by his Privity or Delivery, relating to the Title of any of the Manors, Lands and Tenements in Queſtion in this Suit, or any Part of them, with the Dates, Uſes, Limitations, Truſts, Contents, Names of Parties, the Signing, Terms and Number-Rolls of each of them reſpectively, had, made, levied, ſuffered, obtained or executed, or mentioned ſo to be, by or againſt, or to or for the Benefit of the ſaid Sir *F. R. H. R.* and *H. R.* or either of them, or of their Anceſtors, or any in Truſt for them or any of them, upon or after the Purchaſe of the ſaid ſeveral Eſtates, according to the beſt of this Defendant's Knowledge, Belief or Remembrance, (except Deeds of Purchaſe, wherein no Eſtate is limited but in Fee-ſimple, and Tenants Leaſes, and Copies of Bills, Anſwers, and other Proceedings in the Court of Equity, which Copies are numerous, and this Defendant conceives the ſame to be immaterial, but is however, if required, willing and ready to bring into this Court, or otherwiſe to diſpoſe of as the Court ſhall direct, and alſo except, *&c.*) And this Defendant denies, that he this Defendant, or any other Perſon or Perſons to or for his Uſe, or with his Privity or Conſent, hath, have or ever had, in his, their or either of their Hands, Cuſtody or Poſſeſſion, nor doth know or ever heard of any Deed of Settlement made by the ſaid *H. R. &c.* on, *&c.* of all or any of the Lands in the Bill mentioned, *&c.* And alſo denies, that he or any other Perſon or Perſons to his Uſe, *&c.* have or hath, or ever had in his or their Cuſtody,

dy, Power or Poſſeſſion, any Deeds, Wills, Fines, common Recoveries, Settlements, Decrees, Writings or Evidences any Ways relating to the Title of all or any the Manors and Lands in Queſtion, ſave what are herein and in the Schedule hereto annexed, or in this Defendant's former Anſwer mentioned, to the utmoſt and beſt of this Defendant's Knowledge, Belief or Remembrance, (except as aforeſaid): And this Defendant ſaith, he cannot ſet forth otherwiſe than he hath herein before already done, and as appears by the Schedule hereto annex'd, and this Defendant's ſaid former Anſwer, by what Deed or Writing or how otherwiſe the ſaid *H. R.* became ſeiſed of the Manors and Lands in Queſtion, to him and to the Heirs Males of his Body, with Remainders over to *R. H.* his Uncle, and to the Heirs Male of his Body begotten; and for Want of ſuch Iſſue to the right Heirs of the ſaid *H.* for ever; nor what is the Date or Contents of ſuch Deed or Settlement ſuggeſted in the Complainant's Bill, if ever any ſuch there were, or who are the Parties thereunto, or what are the Particulars of the ſaid Manors and Lands therein mentioned; nor doth he know where the ſame is or ever was, and believes there never was any ſuch; and this Defendant denies, that he hath or ever had in his Cuſtody any antient Deeds, Writings, *&c.* that concern or relate to the Eſtate in Queſtion, and wherein or whereby the Complainant is or may be entitled to any of the Manors and Premiſſes aforeſaid, as Heir to the ſaid Sir *F. R.* *H. R.* and *H. R.* or to either of them; *without that*, that, *&c.*

Of

Of Pleas, Anſwers, *and* Demurrers, *in Chancery.*

A Plea is a ſpecial Anſwer to a Bill, or ſome Part thereof, ſetting forth and relying upon one or more Things as a Cauſe why the Suit ſhould be either diſmiſſed, delayed or barred: And according to the uſual Courſe of Proceedings, Pleas and Demurrers ought to precede the Title of Anſwers; becauſe after a Plea or a Demurrer over-ruled, the Defendant may be admitted to anſwer the Plaintiff's Bill.

The Defendant being ſerved with Proceſs to anſwer, may by Advice of Counſel, upon Sight of the Bill, be enabled to plead any juſt Plea which he hath in Diſability of the Perſon of the Plaintiff, *&c.* or he may demur to the Complainant's Bill; and ſuch Plea, or Demurrer, under the Hand of Counſel, ſhall be received and filed, altho' the Defendant do not deliver the ſame in Perſon, or by Commiſſion, *&c.* Alſo Pleas in this Court are of three Kinds, *viz.* a Plea to the *Juriſdiction*, a Plea to the *Perſon*, and a Plea in *Bar.*

Pleas to the *Juriſdiction*, or in Diſability of the Perſon, need not be on Oath, ſo as they be under Counſel's Hand, nor need Pleas of Matters of Record; but Pleas in Bar of Matters *in pais* are to be upon Oath; and unleſs the Matter of the Bar be ſingle, and ſo full that the Bill requires no further Anſwer, the whole is generally ſet forth by way of Anſwer; and then ſo much

much of it as goes in Bar being relied upon by way of Anſwer, this is called *the Plea and Anſwer* of the Defendant. In Pleas to the Juriſdiction of the Court, you muſt ſhew that the Court has not Juriſdiction of the Cauſe; as if Lands lie in a County Palatine, or an exempt Franchiſe, it is to be pleaded, and that Time immemorial, *&c.* all Suits at Common Law and in Equity touching or within the ſame, have or ought to have been impleaded in the Courts of the ſaid County Palatine, *&c.* before the Chancellor there: Tho' many of theſe Pleas have been over-ruled; and there ſhall be only one Plea admitted to the Juriſdiction of the Court.

In Pleas to the *Perſon*, it may be ſhewn that the Plaintiff is by Law diſabled to ſue; as that he is outlawed, or excommunicated, which works a temporary Diſability; or that he is attainted, *&c.* which is a Diſability perpetual; that he is a Popiſh Recuſant Convict; or that the Plaintiff or Defendant is not ſuch a Perſon as is alledged, *viz.* a Feme Sole, Heir, Executor, or Adminiſtrator, *&c.* and therefore is not to ſue or be ſued as ſuch, for the Matter in Queſtion. Outlawry in a Plaintiff, Executor or Adminiſtrator, is no good Plea; for they ſue *in auter Droit:* And a Plea of Outlawry is only of Force 'till the Outlawry is reverſed, but hinders all Proceedings in the mean Time; and when it is revers'd, the Plaintiff upon Payment of 20*s.* Coſts, may on a new *Subpœna* ſerved, put the Defendant to anſwer the ſame Bill. If an Outlawry is pleaded, the Record or the *Capias*

pias thereupon muſt be pleaded *ſub pede ſigilli*, and it is generally annexed to the Plea: An Outlawry being pleaded in a Suit, for that very Duty or Thing for which Relief is ſought by the Bill, the Plea will of Courſe be diſallowed as put in for Delay, and the Plaintiff ſhall have a *Subpœna* againſt the Defendant for five Marks Coſts, and to make a better Anſwer; otherwiſe a Plea of Outlawry is always a good Plea, ſo long as the Outlawry remains in Force, and the Defendant ſhall not be put to ſet it down with the Regiſter. But if a Plaintiff think a Plea of Outlawry is inſufficient, through miſpleading, *&c.* he may, upon Notice to the Clerk on the other Side, ſet it down with the Regiſter, to be determined by the Court, *&c.* *Ord. Canc.* 119.

Plea of Excommunication of the Plaintiff, pleaded by the Defendant, muſt be certified by the Ordinary, either by Letters Patent containing a poſitive Affirmation that the Complainant ſtands excommunicated, and for what Crime; or by Letters Teſtimonial, reciting *Quod ſcrutatis Regiſteriis invenitur*, *&c.* and either of them muſt be *ſub ſigillo*, and ſo pleaded; alſo the Certificate is to be annexed to the Defendant's Plea; and after ſuch Plea is pleaded, the Plaintiff, upon producing Letters of Abſolution in Court, *&c.* will be allowed to proceed. Excommunication, or Outlawry, in a *prochein amie*, or Guardian, cannot be pleaded in Diſability where an Infant ſues or defends by them: So of Executors, *&c.* As to Pleas of *Alien* Enemy, Attainder, or Papiſt Convict, they are ſo rarely

rarely uſed that little needs be ſaid about theſe; and where an *Alien* Enemy is come here for Refuge and Protection, or has lived here peaceably a long Time, the Court will generally diſcountenance ſuch Pleas.

The foregoing Pleas are Pleas to the Juriſdiction only, or *Pleas in Abatement*; and the Death of either the Plaintiff or Defendant cauſes an Abatement: The Marriage of a Feme Plaintiff abates the Suit; but not of a Feme Defendant, who may not take Advantage of her own Act. And if the Plaintiff and Defendant intermarry, the Suit or Cauſe abates; as it doth if but one of the Plaintiffs marry one of the Defendants. If a Feme Sole Plaintiff marries after Anſwer, and pending the Suit, upon ſhewing it to the Court, the Suit ſhall abate; tho' it may be revived by Bill: But if a Feme Covert exhibit a Bill in her own Name only, it may ordinarily be pleaded in Abatement, and the Bill will be diſmiſs'd. A Feme Sole ſued out a *Subpœna*, and the ſame Day married; the Suit was diſmiſs'd with Coſts. And a Bill being exhibited againſt a Man and his Wife, Daughter of the Plaintiff, the Husband put in a Plea in the Name of himſelf and Wife, and ſwore it, but the Wife would not be ſworn: He thereupon moved that the Plea might be accepted, ſuggeſting that the Wife refuſed by Combination with others; and it was ordered that the Plea ſhould ſtand for the Husband, and the Plaintiff to proceed againſt the Wife by Proceſs of Contempt. 1 *Chanc. Rep.* 68. *Chan. Caſ.* 296. *Cary's Rep.* 139.

A *Plea in Bar* to the Suit is commonly where ſome foreign Matter is ſhewed, whereby ſuppoſing the Bill to be true, yet the ſame, or ſome Part thereof, is barred. This Plea is ſometimes to the very Ground and Foundation of the Suit; as in a Bill for Diſcovery of a Title, *&c.* the Defendant may plead, that the Complainant has conveyed the Premiſſes in Queſtion, or his Right to them, *&c.* to another Perſon. If the Defendant's Title be *Paramount* the Plaintiff's, he may plead it in Bar; and ſo if the Plaintiff hath granted his Right to the Defendant: Alſo a Leaſe, or Purchaſe for valuable Conſideration, *&c.* may be pleaded in Bar, the Defendant by way of Anſwer denying any Notice of the Plaintiff's Title or Claim: And a long and peaceable Poſſeſſion, as 60 Years, is pleadable in Bar. Sometimes a Matter *in pais* is pleaded in Bar; ſuch as a Releaſe, an Account ſtated, *&c.* but the Defendant muſt anſwer a particular Fraud if any be alledged; and where there are Matters alledged in the Bill, to which the Bar reaches not, or ſome Circumſtances relating to the Matter in Bar that require a particular Anſwer, the Defendant muſt anſwer theſe. An Act of Parliament may be pleaded in Bar; as the Statute of Limitations; of Frauds, *&c.* and ſometimes a Record, *viz.* a common Recovery, a Verdict at Law, Judgment, *&c.* and both a Statute and a Record may be thus pleaded; as a Fine with Proclamations according to the Statute, and five Years Non-claim.

Sometimes a Decree or Diſmiſſion in this Court, or a Suit depending elſewhere for the ſame

ſame Matter, is pleaded in Bar: But a Decree and Diſmiſſion in the Court of Exchequer being pleaded here, the Plea was over-ruled; and the Defendant put to anſwer by Advice of the Judges. And if a Cauſe has been formerly diſmiſs'd, but that Diſmiſſion is not ſign'd and inrolled; the Plea of ſuch Diſmiſſion muſt be ſworn to, for 'till the Inrollment it is not recorded. If a Decree is had, and the Party brings a Bill, intending to review the Decree, but does it by Way of original Bill, and not in Form of a Bill of Review, the Defendant may plead the Decree in Bar. A Plea of a former Suit in this Court for the ſame Matters, need not be ſet down with the Regiſter, being a Matter recorded in this Court: But if the Plaintiff be not ſatisfied with the Plea, it ſhall be referred to a Maſter to certify the Truth thereof; and if it be determined againſt the Plaintiff, he ſhall pay 5 *l.* Coſts; ſuch Reference is to be procured by the Plaintiff, and a Report made thereupon within a Month after Filing ſuch Plea, otherwiſe the Bill will be diſmiſs'd of Courſe, with the ordinary Coſts of ſeven Nobles, *&c.* A former Bill depending was pleaded to a ſecond Bill, which had an Addition of ſome new Matter; and ſeeing the Plea was good, the Plaintiff was ordered by the Court to pay the uſual Coſts of a Plea allowed, and that the Defendant ſhould anſwer a ſecond Bill, and the other be diſmiſſed with 20*s.* Coſts. *Ord. Chanc.* 120. 1 *Chan. Caſ.* 241.

If after a Suit commenced at the Common Law, or any other inferior Court, a Bill ſhall

be exhibited in this Court to be relieved for the ſame Matter, the Dependency of the former Suit ſhall be admitted as a good Plea; and the Defendant ſhall not be put to a Motion for an Election, or Diſmiſſion: Alſo ſuch Plea ſhall be proceeded in as a Plea of a former Suit depending in this Court, between the ſame Parties for the ſame Matter. A Defendant being doubtful if he plead the Matter of his Defence, whether his Plea will be allowed good by the Court, may ſhew the whole Matter by Anſwer, and then inſiſt and rely upon it almoſt as if he had pleaded it; but he is not to call it a Plea, nor to have the Benefit thereof 'till Hearing: If a Plea is ordered to ſtand for an Anſwer, as ſometimes on arguing it is, Coſts are ſeldom given on either Side; and the Benefit of the Matter pleaded is uſually ſaved to the Hearing of the Cauſe.

When a Plaintiff conceives the Plea of the Defendant to be naught, for the Matter or Manner of it, he is to put it to the Judgment of the Court, and have the ſame argued; or if he thinks the Plea good, but not true, he may take Iſſue upon it, and proceed to Proofs, *&c.* And if a Matter not of Record be pleaded, and the Plaintiff deſires the Opinion of the Court, whether admitting it to be true, it is a ſufficient Bar, it muſt be argued; and if it be adjudg'd ſufficient, and the Plaintiff take Iſſue thereupon, the Defendant is to prove the Truth of his Plea by Depoſitions, *&c.* as on an Anſwer. If on the general arguing of a Plea, it is allowed good, the Bill is diſmiſs'd with ſeven Nobles Coſts; but

but if the Plea be over-ruled, the Defendant pays five Marks Coſts.

An Infant pleaded by Guardian, and then coming of Age pray'd Leave to amend his Plea; it was granted on paying the Plaintiff five Marks Coſts. If by the Defendant's Overſight, Neglect, or Default, his Plea is over-ruled; the Court, on Motion or Petition in Time, will order it to be argued, the Defendant paying 5 *l.* the Coſts of over-ruling: But if Outlawry or other Matter be pleaded, and the Plea is over-ruled, no other Plea ſhall be afterwards pleaded; but the Defendant muſt anſwer.

Pleas grounded upon the Subſtance of the Matter, or extending to the Juriſdiction of the Court, are to be determined in open Court; and if a Defendant doth not enter his Plea with the Regiſter for that Purpoſe, within eight Days after filing, it ſhall be diſallowed and over-ruled of Courſe, and the Plaintiff may have Proceſs for an Anſwer and Coſts; tho' this is intended of a Plea of Matter *in Pais*, and not of Record; for it is the Plaintiff's Part to enter the latter, or the Defendant within eight Days after filing the Plea may take five Marks Coſts: And no Pleadings ſhall be of any Effect in Court 'till filed, ſo as to be of Record.

A Plea, or Demurrer, may be brought on, either in common Courſe, or by Order, on Motion or Petition; and the Regiſter ſhall not enter any Plea, *&c.* in the Paper at the Inſtance of any Perſon upon a Warrant for ſetting down the ſame on a certain Day, except the Suitor ſhall bring the Order to the Regiſter to be entered

tered two Days before the Day appointed for the Hearing.

If a Plea in Chancery appears to be falſe and fraudulent, the Plaintiff there ſhall have the ſame Advantage as if the Plea were found falſe at Law. A Plea in this Court hath been adjudg'd ill, for Want of an Averment in the Concluſion: And where the Matter of a Plea was ſpecial, but concluded generally whether the Defendant ought to anſwer any Matters contained in the Bill: It was awarded that the Defendant ſhould anſwer to what was not contained in this Plea.

There may be a *Plea* to one Part of the Plaintiff's Bill, a *Demurrer* to another Part thereof, and an *Anſwer* to the Reſidue.

A Plea, Demurrer, and Anſwer, to a Bill concerning a Purchaſe of Lands.

The joint and ſeveral Pleas, Demurrers, and Anſwers of A. B. C. D. *and* E. F. *&c. Defendants, to the Bill of Complaint of* G. H. *Complainant.*

THE ſaid Defendants by Proteſtation not confeſſing or acknowledging all or any of the Matters and Things in the Complainant's ſaid Bill of Complaint to be true, in ſuch Manner and Form as the ſame are therein ſet forth and charged againſt theſe Defendants; they theſe Defendants for Plea to ſo much of the ſaid Bill as is to compel theſe Defendants to ſet forth and diſcover their reſpective Titles in and to the Meſſuage

Meſſuage or Tenement, Lands, Hereditaments and Premiſſes in the Bill of Complaint mentioned, or any Part thereof, ſay that the ſaid Complainant hath ſeveral Times within, *&c.* laſt paſt, affirmed to the Defendant *A. B.* and to ſeveral other Perſons, as the Defendants *C. D.* and *E. F.* have been inform'd, and the ſaid *A. B.* doth affirm, that the ſaid Complainant hath ſold and conveyed away unto *J. E.* of, *&c.* all his Eſtate, Title and Intereſt in and to the Meſſuage or Tenement, Lands and Hereditaments aforeſaid. And the ſaid *J. E.* on, *&c.* alſo affirm'd to the ſaid *A. B.* and others, that he had bought and purchaſed of the Complainant all his Eſtate and Intereſt in or to the ſaid Meſſuage, Lands and Premiſſes now at Variance, and thereupon the Defendant *A. B.* on Behalf of himſelf and the other Defendants *C. D.* and *E. F.* did enter into a Treaty of Purchaſe with the ſaid *J. E.* and the Complainant was privy to and did know of the ſaid Treaty, and gave Encouragement to the ſaid *A. B.* to agree with the ſaid *J. E.* for the Premiſſes aforeſaid, affirming he had nothing to do with, nor laid any Claim to the ſaid Meſſuage and Lands; and the ſaid *J. E.* in an Action of Ejectment brought by the Defendant, *&c.* which was tried at the laſt Aſſizes held at, *&c.* did take upon him the Defence of the ſaid Action, and defend the ſame at the ſaid Trial accordingly, *&c.* all which theſe Defendants do aver, and are ready to prove, as this honourable Court ſhall award; and theſe Defendants are adviſed, that the Complainant having no Intereſt or Title of, in or to the ſaid

Meſſuage, Lands and Premiſſes, but having transferred the ſame to the ſaid *J. E.* as aforeſaid, they nor any of them are not obliged or compellable, by the Rules and Practice of this Court, either to diſcover or ſet forth the Particulars of their or any of their Conveyances or Aſſurances, or the Nature of them, or the Manner of their Execution, or to ſet forth their or any of their Intereſt or Intereſts in or to the ſaid Meſſuage and Lands, or any Part thereof, and therefore pray the Judgment of this Honourable Court, whether they ſhall make any further or other Anſwer to the ſaid Bill of Complaint in this Particular. And theſe Defendants further ſay, that by the Complainant's own ſhewing in and by his ſaid Bill of Complaint, he was an Infant under the Age of 21 Years at the Time of his entering into the Articles of Agreement with, *&c.* in the Bill mentioned; and if ſo, the ſame are voidable in Law, and ought not to be any ways binding to the Complainant or his Heirs, *&c.* and therefore, and for divers other apparent Defects and Imperfections in the ſaid Bill of Complaint contained, theſe Defendants do demur in Law, and humbly demand the Judgment of this Court whether they or any of them ſhall be compellable to make any further Anſwer in any Particular touching his Infancy, or otherwiſe than as herein after followeth. And for Anſwer to ſuch Part of the Complainant's Bill as is not pleaded or demurred unto, theſe Defendants and all of them for and by themſelves ſeverally do deny all Manner of undue Practice, Confederacy or Combination one with another, or to or with any

any other Perſon or Perſons, to defeat, defraud or circumvent the ſaid Complainant, as in the Bill is falſely and ſcandalouſly pretended, or to any other End, Intent or Purpoſe whatſoever; and all of theſe Defendants for themſelves ſeverally deny that they or any of them have or hath, or ever had the ſaid pretended Deeds of Settlement and Intail in the Bill mentioned, or any or either of them, or any other Deeds, Writings or Evidences whatſoever touching or concerning the ſaid Meſſuage or Tenement, Lands and Premiſſes in the Bill mentioned, or any Part thereof, which do any Ways tend to the making out, or Proof of any Title or Intereſt of or for the Complainant, in or to the ſaid Meſſuage and Lands or any Part thereof; nor do theſe Defendants or any of them claim any Title in or to the ſame, or any Part thereof, by from or under the Complainant; nor did theſe Defendants, or any of them, by, from or under any Title derived from the ſaid Complainant, proſecute any Action of Treſpaſs and Ejectment brought in the Name of the ſaid, *&c.* And theſe Defendants ſay, that they hope to prove to this Court, that the Bill of Complaint exhibited by the now Complainant is brought, and this Suit proſecuted by and at the Charge of, *&c.* and not the Complainant; and that the ſaid Complainant hath ſo acknowledged, and the ſaid, *&c.* hath cauſeleſly exhibited this Bill in the Complainant's Name on Purpoſe to vex and trouble theſe Defendants, and to put them to unneceſſary Charges in Law, of which theſe Defendants hope this Honourable Court will take

take due Conſideration, and allow them Coſts accordingly: *Without that*, that, *&c.*

A Plea and Anſwer to a Bill brought for Diſcovery of Deeds, Leaſes, *&c.*

The Plea of W. B. *Eſq; and* E. *his Wife, who was the Widow and Relict of* R. J. *Eſq; deceas'd, and one of the Daughters of* T. P. *Eſq; deceas'd, to Part, and their Anſwer to the Reſidue of the Bill of Complaint of* E. P. *Grandſon and Heir of the ſaid* T. P. *Complainant.*

THeſe Defendants by Proteſtation not acknowledging, *&c.* for Plea to ſo much of the Complainant's Bill as ſeeks to draw in queſtion, in this Honourable Court, their, the ſaid Defendants, or either of their Titles to a certain Meſſuage or Farm called, *&c.* in the ſaid Bill mentioned, and the Lands, Tenements and Hereditaments thereunto belonging, or any Part thereof, or to compel them, theſe Defendants, to ſet forth and diſcover the Date and Contents of their Grant and Leaſe thereof, or to deliver unto the ſaid Complainant an authentick Copy or Counterpart of their ſaid Leaſe, ſay; and firſt the ſaid Defendant *E.* ſaith, That ſhe, this Defendant, about, *&c.* Years ago, being very young, and under the Government of her ſaid Father, was by and with his Conſent and good Liking, upon ſuch Terms and Conditions as he thought fit to make, married to the ſaid *R. J.* who, as ſhe this Defendant was inform'd by her ſaid

ſaid Father, and moſt aſſuredly believes, was, by the Agreement made between him and this Defendant's Father, before his the ſaid *R.*'s Intermarriage with her, this Defendant, to ſettle upon her a Jointure of, *&c. per Annum*, and alſo upon his eldeſt Son by her this Defendant, *&c.* and did, purſuant thereto, levy one or more Fine or Fines, and execute one or more Deed or Deeds for ſettling thereof according to the ſaid Agreement; and further ſaith, That the ſaid *R. J.* happening to die about, *&c.* Years ſince, leaving Iſſue by her, this Defendant, three Sons and one Daughter, ſhe, this Defendant, did expect to have received the Incomes of the ſaid Eſtates ſo ſettled upon her and her eldeſt Son, or at leaſt mentioned and intended to be ſettled as aforeſaid, for the reſpective Maintenance of her ſelf and Children by the ſaid *R. J.* But the ſaid Settlement, as ſhe, this Defendant, was adviſed, being in Law defective, *A. J.* deceaſed, this Defendant's ſaid late Husband's eldeſt Son by a former Venter, took Advantage thereof, and with-held the Poſſeſſion of the ſaid Eſtate and Premiſſes from her, this Defendant, and her ſaid eldeſt Son, for three or four Years together, and put her to long and expenſive Suits in this Court to recover the ſame; and this Defendant's Father having Notice that the ſaid Marriage-Settlement ſo made on this Defendant and her Iſſue, as aforeſaid, was defective, and that ſhe, this Defendant, had been put to great Expence, and was likely to be at greater, to ſupply the Defects thereof, (as in Truth ſhe afterwards was, inſomuch that ſhe did ſuffer at leaſt 500 *l.* Prejudice

judice thereby) and being ſenſible that he himſelf was the Occaſion thereof, by not taking ſuch due Advice in the Making of the ſaid Settlement as he was obliged in his paternal Care to have done, did promiſe her, this Defendant, to conſider her, and make ſome further Proviſion in Conſideration and Recompence thereof; and he, this Defendant's ſaid Father, being as ſhe, this Defendant, hath been credibly inform'd, and verily believes, ſeized in his Demeſne, as of Fee, of Part, and for Life of other Part, with Power to make Leaſes for one, two, or three Lives, *&c.* of ſeveral Manors, Lands, Tenements and Hereditaments of the yearly Value of 1000 *l. per Annum* at leaſt, and having Iſſue Male only one Son, who had been married many Years, and had Iſſue the Complainant only, and was not likely, in all Probability, to have any more Children; and this Defendant's ſaid Father, amongſt other Lands of which he was ſo ſeiſed as aforeſaid, being ſeiſed of the Meſſuage or Farm called, *&c.* and of ſeveral Lands, Tenements and Hereditaments thereto belonging, then in the Poſſeſſion of, *&c.* ſince deceaſed, being of the yearly Value of, *&c.* or thereabouts, was minded and fully reſolved, as ſhe, this Defendant, hath been inform'd and believes, in Performance of his ſaid Promiſe to her, this Defendant, and in Satisfaction and Recompence of the great Trouble, Charge and Expence ſhe had been at, or might ſuſtain, or be put unto, to ſupply the Defects of the ſaid Marriage-Settlement, and for other good Conſiderations, to ſettle the ſame upon this Defendant for her better Main-

Maintenance during her Life, in Caſe ſhe ſhould ſurvive him her ſaid Father; and for that Purpoſe he, this Defendant's Father, by Deed indented under his Hand and Seal bearing Date, *&c.* then, or within few Days after, ſealed and delivered, did demiſe, grant, and convey the ſaid Meſſuage or Farm called, *&c.* and all the Lands, Tenements and Hereditaments thereunto belonging, to her, this Defendant, and her Aſſigns, for and during the Term of fourſcore Years, from thence next enſuing, and fully to be compleat and ended, if ſhe, this Defendant, ſhould ſo long live, yielding and paying therefore yearly, during the ſaid Term, to, *&c.* one Pepper-Corn only at the Feaſt of St. *Michael* the Archangel, if it ſhould be then lawfully demanded; by which Indenture the ſaid *T. P.* this Defendant's ſaid Father, for himſelf, his Heirs, Executors and Adminiſtrators, did covenant and agree, to and with this Defendant, her Executors and Aſſigns, that ſhe, this Defendant, and her Aſſigns, ſhould and might peaceably and quietly have, hold, occupy and enjoy the ſaid Meſſuage and Farm, *&c.* without the Let, *&c.* and that he, the ſaid *T. P.* ſhould and would, *&c.* And this Defendant's ſaid Father, before he ſo made the ſaid Leaſe to her, this Defendant, did affirm that he had good Power to make the ſame; and they, theſe Defendants, for further Plea to the Complainant's ſaid Bill of Complaint ſay, That the ſaid *T. P.* her, this Defendant's, ſaid Father, died on or about the Day, *&c.* in the Year, *&c.* and believe and hope to prove, that he was at the Time of his Death

ſeiſed in Fee, and for Life, with Power to make Leaſes, as aforeſaid, of the ſaid Manors and Lands, *&c.* and that after his Death the ſaid Premiſſes deſcended to the ſaid Complainant, *&c.* and that the ſaid Lands and Premiſſes ſo deſcended unto the ſaid Complainant, were of far greater Value than the Lands by the ſaid Indenture demiſed to her, this Defendant, as aforeſaid, *&c.* And theſe Defendants by Way of Plea further ſay, That theſe Defendants, after the Death of her, this Defendant's, Father, being then intermarried, by Virtue of the ſaid Leaſe entered upon the ſaid Farm and Premiſſes, and have ever ſince, till about the Month of, *&c.* laſt, quietly enjoyed the ſame, without the Interruption or Denial of any Perſon or Perſons whatſoever; about which Time, a Writing purporting (as theſe Defendants are adviſed and believe) a Declaration in Ejectment in the Name of, *&c.* as Leſſee of the Complainant, in order to the Recovering from theſe Defendants the Poſſeſſion of the ſaid Farm and Premiſſes, and to evict their ſaid Leaſe thereof, was delivered unto him, this Defendant, being Tenant in Poſſeſſion of the Premiſſes; and the Complainant, the better to enable him to proceed in the ſaid Cauſe, did demand of theſe Defendants a Copy or Counterpart of the ſaid Leaſe, which theſe Defendants refuſing to deliver or execute unto him, unleſs he would confirm the ſaid Leaſe, he, the ſaid Complainant, did exhibit his ſaid Bill againſt theſe Defendants, to enforce them to do the ſame, and that thereupon theſe Defendants, to prevent all Diſputes concerning the ſaid Leaſe,

by Advice of Counſel, tendered, *&c.* and the ſaid Complainant refuſed, *&c.* whereupon they, theſe Defendants, did, *&c.* All which Matters ſo by theſe Defendants pleaded, they do aver and will prove, as this Honourable Court ſhall award, and demand Judgment, *&c.* and they, theſe Defendants, ſaving to themſelves the Benefit of their ſaid Plea, for Anſwer to the Reſidue of the Complainant's ſaid Bill of Complaint ſay, That the ſaid Leaſe ſo made by the ſaid *T. P.* her, this Defendant's, Father deceas'd, to her, this Defendant *E.* doth not contain any Covenant on the Part and Behalf of this Defendant, her Executors, Adminiſtrators, or Aſſigns, to be perform'd or kept, or any other Reſervation of Rent, than thoſe which are herein before by Way of Plea ſet forth; and reſpectively deny, that they, or either of them, or any other Perſon or Perſons for them, or either of them, or by their Conſent or Privity, have, hath, or ever had any Deeds, Writings, or Evidences belonging to the Eſtate of the ſaid Complainant, or any Part thereof, except the ſaid Leaſe ſo made to her, this Defendant, by her ſaid Father, as aforeſaid, *&c.* and alſo deny, that they, or either of them, did ever cancel or deface any of the Deeds or Evidences belonging to the Eſtate of the ſaid Complainant, as by the ſaid Bill is ſcandalouſly and falſly alledged, and believe that the Complainant hath all the Deeds concerning his Eſtate, which belong unto him, or which he ought to have, in his own Cuſtody, uncancelled and undefaced; and theſe Defendants likewiſe deny, that they, or any other Perſon

Perſon or Perſons, *&c.* have or hath poſſeſs'd, or did at any Time poſſeſs themſelves, of any Part of the Eſtate of the ſaid Complainant, other than what was demiſed unto her by the ſaid Indenture of Leaſe, by Virtue of which they juſtify the Detaining the Poſſeſſion thereof; or that they, theſe Defendants, *&c.* have, or hath at any Time committed, or cauſed or allowed to be committed, any Waſte, Spoil or Deſtruction upon the ſaid Premiſſes ſo to her, this Defendant, demiſed as aforeſaid, or any Part thereof, or upon any other Part of the Eſtate of the ſaid Complainant, as by his ſaid Bill is alledged, or otherwiſe howſoever; or that they know of any other Eſtate or Right, which they, or either of them have, or that they do pretend to have any other Eſtate or Title, of, in, or to the Eſtate of the ſaid Complainant, than what is herein before ſet forth; and ſhe, this Defendant, denies, that ſhe did ever ſeal and deliver, or was required by her ſaid Father to ſeal and deliver, any Counterpart of the ſaid Leaſe; but theſe Defendants ſay, that they are and ſhall be willing, and do now offer, as they have formerly offered, to deliver unto the ſaid Complainant, at his Coſts and Charges, an authentick Copy of the ſaid Leaſe, or to execute a Counterpart thereof to him, in Caſe he will confirm the ſame, and make further Aſſurance of the Premiſſes, *&c.* And they, theſe Defendants, do reſpectively deny all and all Manner of Combination wherewith they are, in and by the ſaid Complainant's Bill of Complaint, unjuſtly charged; and pray to be hence diſmiſſed with Coſts, *&c.*

A Plea

A Plea to the Juriſdiction, and Anſwer relating to a Conveyance of Lands, and Title to the ſame.

The Plea and Anſwer of A. B. *Gent. Defendant, to the Bill of Complaint of* W. A. *Complainant.*

THE ſaid Defendant by Proteſtation not confeſſing or acknowledging any of the Matters or Things in and by the ſaid Bill of Complaint ſet forth and alledged to be true, ſaving that the Lands and Tenements, with their Appurtenances mentioned in the ſaid Bill, concerning the Title whereof the ſaid Bill is exhibited into this Honourable Court, are ſituate and do lie within the Pariſh of, *&c.* in the ſaid County of, *&c.* for Plea thereunto ſaith, That the ſaid County of, *&c.* as this Defendant is inform'd, is and hath been, Time out of Memory of any Man to the contrary, a County Palatine, and that as well the ſaid Lands, Tenements and Premiſſes, as all other Lands within the ſaid County Palatine, or belonging thereunto, and all Actions and Suits at Common Law, or in Equity, by Reaſon of the Premiſſes, or any Part thereof, have been, or ought to have been by all the ſaid Time impleaded, and yet are impleadable in the Courts of the ſaid County Palatine, and not elſewhere; and therefore humbly demands the Judgment of this Honourable Court, if this Court will hold Plea upon, and enforce the Defendant to anſwer to the ſaid Bill, as and for the Cauſe aforeſaid, wherein the ſaid

Defendant doth ſubmit to the Order of this Honourable Court. And if this Defendant ſhall, by Order of this Court, be compelled to make any other Anſwer to the ſaid Bill of Complaint, then, and not otherwiſe, this Defendant having reſerved to himſelf now, and at all Times hereafter, all Advantage of Exception to the Incertainties and Inſufficiencies of the ſaid Bill of Complaint; for Anſwer thereto this Defendant ſaith, That the ſaid Lands, *&c.* mentioned in the Complainant's Bill, are ſituated, and do lie in, *&c.* aforeſaid, whereof this Defendant doth acknowledge, that the ſaid *T. A.* mentioned in the Bill, was in his Life-time ſeized (amongſt other Lands and Tenements) of a good Eſtate of Inheritance in Fee-ſimple, to him and his Heirs, as is ſet forth in the ſaid Bill of Complaint; but the Defendant doth deny, that the ſaid *T. A.* died thereof ſo ſeiſed, or that the Premiſſes after his ſaid Death, did deſcend to the Complainant, or that he ought to have enjoy'd the ſame as is pretended by the Complainant's Bill; for this Defendant ſaith, That the ſaid *T. A.* being ſeiſed of the Lands, Tenements, and Premiſſes aforeſaid, in Fee as aforeſaid, and bearing a more particular Affection to the Defendant, who is the eldeſt Son living of the ſaid *T. A.* by another Wife, in Conſideration thereof, and of the Sum of, *&c.* paid by the Defendant to the ſaid *T. A.* by his Deed of Feoffment under his Hand and Seal, dated, *&c.* duly executed by Livery of Seiſin in the Preſence of, *&c.* and other credible Witneſſes, he the ſaid *T. A.* did grant, convey, and aſſure the ſaid Lands and Premiſſes unto the Defendant,

dant, his Heirs and Aſſigns, to the only Uſe of the ſaid Defendant, his Heirs and Aſſigns for ever, *&c.* By Virtue whereof, the Defendant the ſaid Day of, *&c.* in the Year aforeſaid, entered thereon, and was ſeiſed thereof in his Demeſne as of Fee, before the Death of the ſaid *T. A.* and he and his Aſſigns have ever ſince hitherto continued ſeiſed, and received the Rents, Iſſues and Profits of the ſaid Premiſſes, as he humbly conceives he and they might lawfully do, by Reaſon whereof, and of the ſaid Deed of Feoffment, wherein the ſame are ſpecially granted to this Defendant, he, this Defendant, doth confeſs he hath in his Cuſtody ſeveral Deeds, Writings and Evidences, concerning the ſaid Lands and Premiſſes, which do of Right belong to him for Maintaining of his Title as aforeſaid, and for that Purpoſe he conceives and is adviſed they ought to remain in his Cuſtody, and not be brought into this Honourable Court, unleſs the Complainant had a good Title to the ſame; nevertheleſs the ſaid Defendant is willing to ſubmit to what Order this Court ſhall make therein; and this Defendant denies, that he entered into the Premiſſes without Title by Abatement after the Death of the ſaid *T. A.* or that he wrongfully detained the Poſſeſſion thereof from the Complainant, as is pretended, but confeſſeth that he refuſed, as he humbly conceives he lawfully might, to account with the Complainant for the meſne Profits of the Premiſſes, or to deliver unto him the Writings and Evidences aforeſaid, *&c. without that*, that, *&c.*

A Plea of Privilege, to the Juriſdiction of the Court of Chancery.

The Plea of D. G. *Defendant, to the Bill of Complaint of* L. D.

THIS Defendant by Proteſtation, *&c.* for Plea ſaith, That the Univerſity of *Oxford* is an antient Univerſity, and Time beyond the Memory of Man hath been incorporated by the Name of the Chancellor, Maſters and Scholars of the Univerſity of *Oxford*; and the ſaid Maſters and Scholars of the ſaid Univerſity have, and beyond the Memory of Man have had and uſed to have a Court, to be holden at any Place within the Precincts and Limits of the Univerſity, where the Chancellor of the ſaid Univerſity, or his Vice-Chancellor, Commiſſary, Official, or Deputy ſhall appoint; and the ſaid Chancellor, Maſters and Scholars, have alſo beyond the Memory of Man, had and uſed to have Cognizance of all Manner of Actions, Suits and Pleas whatſoever, (except Aſſizes and Pleas of Freehold) whereof any Scholar or privileged Perſon of the ſaid Univerſity is one Party, to be heard and determined before the Chancellor, or his Vice-Chancellor, Commiſſary, Official, Lieutenant or Deputy, for the Time being, in the ſaid Court, for and during all the Time aforeſaid. And all Actions, Suits, Plaints, Debates and Controverſies wherein any Scholar or Perſon privileged of the ſaid Univerſity is one Party, (except Aſſizes, *&c.*) by the Cuſtoms and Privileges of

of the ſaid Univerſity, have been, and have uſed to be heard, examined and determined in the ſaid Court by the ſaid Chancellor, or his Vice-Chancellor, *&c.* according to Law, Equity and Juſtice, and not elſewhere, in any other Court, or before any other Judge; and the ſaid Court is, and Time beyond the Memory of Man hath been, a Court as well of Law as Equity, and doth not uſe to give or allow to any Party, Penalties, or any other Extremities of Law; but the Judges for the Time being do, and during all the Time aforeſaid have uſed to determine all Plaints, and Suits therein depending, by the Rules of Equity and Law, and to mitigate and moderate Suits and Actions, according to Equity and good Conſcience, as the Cauſe ſhall indifferently appear upon Proof before them made; and the ſaid Chancellor, Maſters, and Scholars have, and beyond the Memory of Man have had, and uſed to have Miniſters and Officers of their own, to execute ſuch Judgments and Sentences as ſhall be there given, and by Virtue thereof Proceſs of Execution, or otherwiſe, ſhall iſſue out of the ſaid Court within the Realm of *England*, *&c.* And upon Notice that any Perſon there ſued is a Perſon, that by the Cuſtoms of the ſaid Univerſity ought to enjoy the Privilege thereof, all other Courts ought to ſurceaſe, and not to proceed in any of the Matters aforeſaid, if either of the ſaid Parties be a Scholar, or privileged Perſon of the ſaid Univerſity; and that Time beyond the Memory of Man, all Graduates and Scholars of the ſaid Univerſities and their Servants, and all Servants and Officers, and Inhabi-

tants of the ſaid Univerſity, have had and have uſed, and ought to have and enjoy the Liberties and Privileges of the ſaid Univerſity, and there in the ſaid Court of the ſaid Chancellor, Maſters and Scholars, to ſue and be ſued, and be impleaded for all Matters, Suits and Plaints whatſoever, (except, *&c.*) and not elſewhere, or before any other Judge whatſoever; and that K. *Hen.* 8. by his Letters Patent under the Great Seal of *England*, and inrolled in this Honourable Court, bearing Date, *&c.* in the twenty-fourth Year of his Reign, hath granted, ratified and confirmed unto the ſaid Chancellor, Maſters and Scholars, and their Succeſſors, amongſt other Things, the ſaid Liberties, Franchiſes and Privileges; which Privileges have alſo been confirmed by divers of his ſaid Majeſty's Succeſſors, and at the Parliament holden at *Weſtminſter* the Day of, *&c.* in the 13th Year of Q. *Eliz.* it was enacted, That the ſaid Chancellor, Maſters and Scholars, and their Succeſſors, ſhould have and enjoy all the before-mentioned Immunities and Liberties in all Things, as in the aforeſaid Letters Patent to them were granted, or intended to be granted; and the ſaid Liberties and Franchiſes have, at ſeveral Times been allowed in this Honourable Court, as by the Records thereof, whereunto this Defendant referreth himſelf, more particularly appears; and for further Plea this Defendant ſaith, That he, this Defendant, is Principal Rector of, *&c.* within the ſaid Univerſity, and reſident there, and by that Means privileged, and ought not to be ſued in this Court, as by the Certificate of the Chancellor

of

of the ſaid Univerſity, under the Seal of the ſame Univerſity, hereunto annexed, doth and may appear; and he, this Defendant, dwelling and inhabiting within the ſaid Univerſity, and being a privileged Perſon there, ought to be ſued in the Court of the ſaid Chancellor, Maſters and Scholars of the ſaid Univerſity of *Oxford*, and not elſewhere, or in any other Court; wherefore, and for that the Complainant's Bill, which the Complainant hath now brought againſt the Defendant in this Court, not entitling him to any Demand, but ſeeks only an Account againſt this Defendant, which, if there be any juſt Cauſe for the ſame, he may be relieved in by the ſaid Court of the ſaid Chancellor, Maſters and Scholars of the ſaid Univerſity, and for that there is not any Eſtate or Plea of Freehold in Queſtion; for all theſe Cauſes, this Defendant doth humbly demand the Judgment of this Court, whether he ſhall be compelled to make any Anſwer unto the ſaid Bill, and prays to be hence diſmiſs'd with his Coſts and Charges in this Behalf wrongfully ſuſtain'd.

A Plea of Outlawry to the Perſon of the Complainant.

The Plea of, &c. *Defendant, to the Bill of Complaint of*, &c.

THE ſaid Defendant by Proteſtation, *&c.* for Plea thereunto ſaith, That the Complainant now is, and ſtandeth outlawed at the Suit of, *&c.* and ſo is diſabled by the Laws of

this Realm to commence or proſecute any Suit or Suits in this Honourable Court, or in any other Court, againſt this Defendant or any other Perſon or Perſons, until the ſaid Outlawry is reverſed, ſo far forth as the Perſon or Perſons againſt whom any Suit or Action ſhall be commenced, may lawfully plead the ſaid Outlawry in Bar of the Suit brought; and for that on the Day, *&c.* in the Year of the Reign, *&c.* the Complainant was outlawed after Judgment, at the Suit of the ſaid, *&c.* in an Action of Debt, *&c.* as by the ſaid Outlawry or Writ of *Capias Utlagat. ſub pede ſigilli* hereunto annexed may appear, which ſaid Outlawry yet remains unreverſed; and this Defendant doth and will aver and maintain, that the ſaid *A. B.* the Complainant named in the ſaid Bill of Complaint, and the ſaid *A. B.* named in the ſaid Writ of *Capias Utlagatum*, is one and the ſame Perſon, and not divers; therefore this Defendant doth plead the ſaid Outlawry, and reſt and abide in Law thereupon, and humbly demands the Judgment of this Honourable Court, whether he, this Defendant, ſhall be compelled to anſwer the ſaid Bill of Complaint, until the ſaid Complainant hath reverſed the ſaid Outlawry, and is become a Perſon of Ability to exhibit ſuch Bill of Complaint againſt this Defendant; and in the mean Time prays to be hence diſmiſſed with his Coſts, *&c.*

The *Plea* to the Perſon of *Excommunication*, 'till Letters of Abſolution are produc'd, *&c.* is pleaded

pleaded much after the ſame Manner as the Plea of Outlawry, the Biſhop's Certificate being annexed.

A Plea in Bar, of the Statute of Limitations.

The Plea of C. D. *Defendant, to the Bill of Complaint of* A. B. *Complainant.*

THE ſaid Defendant by Proteſtation, *&c.* for Plea ſaith, by an Act of Parliament made at *Weſtminſter* in the 21ſt Year of the Reign of K. *James* I. entitled, *An Act for Limiting of Actions, and avoiding Suits at Law*, it was enacted, that all Actions of Debt ſhould be brought within ſix Years, *&c.* and Actions of, *&c.* within, *&c.* and not after, (reciting the Statute). And now foraſmuch as the Scope of the Complainant's Bill is to have and recover a Debt of, *&c.* which, as he pretends, was due to him for Fees and Money laid out in managing of the Suit or Cauſe, in the Bill mentioned, for the ſaid Defendant in the Year of our Lord, *&c.* and, *&c.* that the ſaid Defendant promiſed in the ſaid Year to give him for his extraordinary Care and Pains in Managing the ſaid Cauſe; which ſaid Debt contracted, and Promiſe made by this Defendant to the Complainant, if any ſuch have been, being in the ſaid Year, *&c.* as by the ſaid Bill is alledged, appears by the Complainant's own Shewing to be above ſix Years paſt ſince the ſaid Debt was contracted or Promiſe made, and the ſame not relating to any Merchant's Accounts, *&c.* And no Suit having been

been commenced for the ſame Debt or Promiſe, or either of them, by the ſaid Complainant againſt this Defendant, nor Bill filed in this Honourable Court, or Proceſs had thereupon, nor any freſh Promiſe made for the ſaid Debt, *&c.* within the Time ſo limited and appointed by the ſaid Act as aforeſaid; this Defendant is by his Counſel adviſed, That the ſaid Suit in this Court for the ſaid Debt and Promiſe is barred by the ſaid Act of Parliament, and that the Complainant ought not to be relieved for the ſame; and therefore this Defendant doth plead the ſaid Act of Parliament in Bar to the Complainant's ſaid Bill, and of his pretended Demands thereby, for which he ſeeks to be relieved, and humbly prays the Judgment of this Court, whether, *&c.*

A Plea of the Statute of Frauds and Perjuries in Bar of the Plaintiff's Bill.

The Plea of, &c. *Defendant, to the Bill of*, &c.

THIS Defendant, *&c.* ſaith, That he is adviſed the Complainant by his Bill of Complaint ſeeks to have a Diſcovery of a ſuppoſed Marriage Agreement, or Promiſe, ſuggeſted to be made by the Defendant in the Month of, *&c.* in the Year, *&c.* or at ſome Time ſince, to pay unto the Complainant the Sum of 500*l.* as a Portion upon the Complainant's Marriage with, *&c.* his late Wife deceaſed, and to be relieved thereupon; to which this Defendant, as he is adviſed, doth plead, That by a Statute or Act

Act of Parliament made in the 29th Year of the Reign of King *Charles* the Second, entitled, *An Act for Prevention of Frauds and Perjuries*, it is amongſt other Things enacted, That from and after, *&c.* no Action ſhould be brought whereby to charge any Perſon upon any Agreement made in Conſideration of Marriage, unleſs the Agreement upon which ſuch Action ſhall be brought, or ſome *Memorandum* or Note thereof, ſhall be put in Writing and ſigned by the Party to be charged therewith, or ſome other Perſon thereto by him authorized, or to that Effect; which Statute, and particularly the ſaid Clauſe therein, this Defendant doth plead in Bar of the Complainant's Demands, the Plaintiff not ſuggeſting that the Agreement or Promiſe by this Defendant was ever put into Writing, and ſigned by him, this Defendant, or by any other Perſon by his Order; and this Defendant doth humbly demand the Judgment of this Honourable Court, *&c.*

A Plea in Bar, of an Account ſtated, and Acquittance, Releaſe, *&c.*

The Plea of D. F. *Gent. Defendant, to the Bill of Complaint of* H. T. *Complainant.*

THE ſaid Defendant by Proteſtation, *&c.* as to ſuch Part of the Bill as demands an Account of and concerning any Matters and Things tranſacted between the Complainant and this Defendant at any Time before and unto, *&c.* This Defendant doth plead thereunto, and for

for Plea ſaith, That after he, this Defendant, had finiſhed his firſt Voyage to, *&c.* in the Bill mentioned, that is to ſay, on the Day of, *&c.* aforeſaid, the Complainant and this Defendant did make up, ſtate and ſettle an Account in Writing, then delivered to the Complainant, of the ſaid Voyage, and of all Matters and Things thereto relating, or at any Time before the ſaid Day, *&c.* being or depending between the Complainant and this Defendant; and the Complainant after a ſtrict and deliberate Examination of the ſaid Account, and every Particular thereof, did approve and allow of the ſaid Account, and did actually receive of this Defendant the Money then due on the Ballance thereof, *&c.* and thereupon the ſame Day of, *&c.* the Complainant did give to this Defendant a Receipt or Acquittance under his Hand, which is in theſe Words, viz. *Received this Day of*, &c. *in the Year*, &c. *from* D. F. *the Sum of ſixty Pounds, being in full of all Accounts to this Day, I ſay received by me* H. T. as in and by the ſaid Acquittance under the Hand of the ſaid Complainant, and ready to be produced to this Honourable Court, may appear; and this Defendant doth plead the ſaid Account ſtated, the Payment of the ſaid Money, and the Receipt or Acquittance for the ſame, in Bar as to that Part of the ſaid Bill as requires an Account from this Defendant for any Matters or Things in the Bill mentioned, on or before the ſaid Day of, *&c.* and humbly demands the Judgment of this Court, *&c.* And this Defendant, by Way of Plea ſaith, That ſince the Exhibiting of the Com-

Complainant's Bill into this Honourable Court, that is to ſay, on or about, *&c.* the ſaid Complainant by a Releaſe by him ſigned, ſealed, and delivered, bearing Date the ſaid Day of, *&c.* and ready to be produc'd to this Honourable Court, did for himſelf, his Executors and Adminiſtrators, remiſe, releaſe, and for ever quit-claim unto this Defendant, his Executors and Adminiſtrators, all and all Manner of Actions, Suits, Debts, Bonds, Bills, Specialties, Judgments, Executions, Accounts, Reckonings, Treſpaſſes, Damages and Demands whatſoever, which the Complainant, his Executors or Adminiſtrators then had, or hereafter might or could have againſt this Defendant, his Executors or Adminiſtrators, for or in Reſpect, or by Reaſon or Means of any Matter, Cauſe or Thing whatſoever from the Beginning of the World until the Day of the Date of the ſaid Releaſe; for which Cauſe this Defendant humbly demands the Judgment of, *&c.*

A Plea of a Fine and Recovery levied and ſuffered, pleaded in Bar.

The Plea of, &c. *to the Bill of Complaint of,* &c.

THE ſaid Defendant by Proteſtation, *&c.* ſaith, that the ſaid Complainant's Bill ſeeking to queſtion his this Defendant's Title to the Lands and Tenements therein and hereafter mentioned, *&c.* for Plea thereunto pleadeth, that *A. B.* in the ſaid Complainant's Bill named,

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was ſeized in Fee-ſimple or Fee-tail of and in all that Meſſuage or Tenement and Lands, *&c.* in the Complainant's Bill mentioned, commonly called or known by the Name or Names of, *&c.* and ſituate, *&c.* and that he the ſaid *A. B.* being ſo thereof ſeized, and of the Age of 21 Years and upwards, did in *Eaſter-Term* in the Year of, *&c.* in due Form of Law, acknowledge and levy unto *C. D.* and *E. F.* and the Heirs of the ſaid *C.* in his Majeſty's Court of Common Pleas at *Weſtminſter*, one Fine *Sur Conuzance de droit come ceo*, &c. with Proclamations in that Behalf made of all and ſingular the ſaid Premiſſes, and that in the ſame Term a good and perfect common Recovery was in due Form of Law had and ſuffered in the ſaid Court of Common Pleas of the ſame Premiſſes, in which Recovery *G. H.* and *J. K.* did demand the Premiſſes of the ſaid *C. D.* and *E. F.* who vouched to Warranty the ſaid *A. B.* who vouched over to Warranty the common Vouchee, as in and by the Records of the ſaid Fine and common Recovery, Relation being thereunto had, may more fully appear; and he this Defendant is adviſed by his Counſel, and believes that the ſaid Fine was ſo levied by the ſaid *A. B.* to the ſaid *C. D.* and *E. F.* as aforeſaid, to make them Tenants of the Freehold of the Premiſſes, that ſo a common Recovery might be had and ſuffered thereof, in Manner and Form aforeſaid: And this Defendant further by Way of Plea ſaith, that the ſaid *A. B.* in the Year, *&c.* died without Iſſue, and *T. B.* the Complainant's Father in the Bill named, was living at the Time

of the Death of the ſaid *A. B.* and believes and hopes to prove of the Age of 21 Years, and *Compos Mentis*, and at large and out of Priſon, and within the four Seas; and that he the ſaid *T. B.* ſurvived the ſaid *A. B.* above ten Years, and did not within five Years of the Proclamations had and made upon the ſaid Fine, or at any Time after, proſecute any Title, Claim or Intereſt, of, in or to the ſaid Premiſſes, or any Part thereof, by Action, Entry or otherwiſe; ſo that as this Defendant is adviſed, the Remainder in the ſaid Complainant's Bill alledged to be limited of and in the Premiſſes, or any Part thereof, to the ſaid *T. B.* and his Heirs, for Default of Iſſue by, *&c.* in the ſaid Bill mentioned, was docked by the ſaid Recovery; and that in Caſe the ſaid Remainder was not docked by the ſaid Recovery, yet however the Complainant is barred of all Claim of, in and to the ſaid Premiſſes, and every or any Part of the ſame by Virtue thereof, and by Force of the ſaid Fine with Proclamations thereupon, and Nonclaim as aforeſaid: And he this Defendant doth aver his ſaid Plea, and humbly demands the Judgment of this Honourable Court, whether, *&c.*

A Plea in Bar, of a former Suit depending for the ſame Matter, Want of Parties to the Bill, &c.

THIS Defendant by Proteſtation not confeſſing, *&c.* for Plea ſaith, that the ſaid Complainants in, *&c.* Term, which was in the Year of our Lord, *&c.* did exhibit their Bill into

to this Honourable Court againſt this Defendant and one *A. M.* to have an Account of the Money rais'd by the Sale of Lands, Tenements, and Eſtates in the Complainant's now Bill mentioned, and claiming ſuch Shares and Proportions thereof, and ſuch Rights and Intereſts therein, as by their preſent Bill they do now claim, and praying Relief againſt this Defendant in the ſame Manner and for the ſame Matters, and to the ſame Effect, as they now do by their Bill; to which ſaid firſt Bill this Defendant and the ſaid *A. M.* did put in their Anſwer, and the ſaid Complainants thereunto replied, and Witneſſes were examined on both Sides, and their Depoſitions duly publiſhed; and the ſaid Cauſe is yet undetermined; and therefore this Defendant doth plead the ſaid former Bill, Anſwer and Proceedings in Bar to the ſaid Complainants now Bill, and humbly prays the Judgment of this Honourable Court, whether he ſhall be put to make any further or other Anſwer thereunto, *&c.* or, for that, *&c.* who have the like Right to call this Defendant to account as the now Complainants have, are no Parties to the now Complainants Bill, whereby this Defendant is liable to a new Account, and may be called to a further Account by them, or any of them, and ſo the Defendant be doubly vexed for the ſame Matters; and for that, *&c.* therefore this Defendant pleads the ſaid Matters, *&c.* and humbly prays, *&c.*

Note; In a Plea as well as *Anſwer*, all or ſeveral of the Matters pleaded in Bar may be pleaded together.

Of Demurrers *ſeparately and jointly with Anſwers*, &c.

A Demurrer may ariſe on any Part of the Pleadings; whereas a Plea can be put in to the Bill of Complaint only. But a Demurrer is generally where there is Matter defective contain'd in the Bill; and is the Allegation of the Defendant; which allowing the Matters of Fact alledged by the Complainant in his Bill to be true, ſhews that as they are ſet forth by the Plaintiff himſelf, and appear by his own Shewing, they are inſufficient for him to proceed upon, or to oblige the Defendant to make Anſwer unto; wherefore, it demands the Judgment of the Court thereupon.

Demurrers to Anſwers have been held to be ill; though in ſome ſpecial Caſes, a Demurrer may be properly put in to an Anſwer in Chancery, and ſuch Demurrers have been divers Times allowed. So where a Replication contained new Matter, not in the Complainant's Bill, nor ariſing from the Anſwer, but known to the Plaintiff at the Time of exhibiting his Bill; the Defendant pleaded and demurred to the Replication, and the Court allowed it to be good: And a Demurrer may be to Interrogatories, *&c.* But a Demurrer to a *Subpœna* in Nature of a *Scire Facias*, *&c.* was conceived to be ridiculous and over-ruled. 1 *Chanc. Caſe* 50, 56. 1 *Chanc. Rep.* 259.

Every Demurrer is to expreſs the particular Cauſe or Cauſes of the Demurrer, and ſhall be

determined in open Court; and that Cauſe is either for ſome Defect in the Bill, or where there is foreign Matter alledged by the Defendant, *&c.* But although by the Rules and Orders of the Court, Demurrers are to expreſs the ſeveral Cauſes of Demurrer, 'tis ſaid other Cauſes may be inſiſted on at the Arguing and Determination thereof; though if any Cauſe ſhall be inſiſted upon at the Arguing, beſides what is particularly alledged in the Ingroſſment on the File, and the Bill be diſmiſs'd in Reſpect of ſuch Cauſe newly alledged; yet the Defendant ſhall pay the ordinary Coſts, if the Cauſes particularly alledged be diſallowed. If a general Demurrer, or without Cauſe, be put in, it will be diſallow'd; and where a Defendant demurred generally, without ſhewing any Cauſe, the Court order'd a *Subpœna* to make better Anſwer. *Ord. Canc.* 117. *Carey*'s Rep. 87, 88, 125.

A Husband alone cannot demur for his Wife; and a Woman that had an Husband parted from her, ſued alone for Maintenance ſet apart for her by the Husband's Agreement, but put into the Hands of another Perſon; he demurred becauſe ſhe ſued without her Husband, and it was allowed to be good. A Bill of Revivor was brought to revive all the former Proceedings, and eſpecially an Order by Conſent; the Defendant demurred to the Bill, for that it ſought to revive an Order to which the Feme was a Party, and ſhe being ſince married, her Conſent to the Order of Reference was conſequently determined; and upon Debate the Demurrer was allowed: A Defendant demurred, becauſe the Relief

lief ſought was for more than the Security by Bond, and therefore not proper in Equity; and for that Part of the Bill which was for Diſcovery of Aſſets was ill, the Charge not being poſitive that Aſſets, or any Goods, came to the Defendant's Hands; and both Points were allowed as good Cauſes: Alſo the Bond in this Caſe determined the parol Agreement. 1 *Chanc. Caſe* 77, 226.

On a Demurrer pretending that one Executor could not ſue another, it was over-ruled, as the Matter was meerly Teſtamentary. 'Tis ſaid a Demurrer for Excommunication hath been over-ruled; and where a Defendant put in a Demurrer to the Plaintiff's Bill, becauſe the Plaintiff was outlawed; he was order'd to anſwer. The Defendant refuſed to anſwer the Receipt of Rent, and demurred for that the Plaintiff had Remedy at Law; but it was over-ruled, and he put to make a better Anſwer; as in the Caſe of a Plea, ſo on a Demurrer; if it be over-ruled, the Defendant pays five Marks Coſts; but if it be allowed good, the Bill is diſmiſs'd, and the Plaintiff pays Coſts.

A Demurrer is to be put in under Counſel's Hand, without Oath; but it hath been ordered, that a Demurrer for Outlawry ſhould be upon Oath, and the Record alſo be produc'd under Seal; and that a Demurrer becauſe of a former Diſmiſſion, ſhould be on Oath. If a Demurrer be inſufficient, frivolous and vain, in ſuch Caſe the Court hath given 5 *l.* Coſts to the Plaintiff, and ordered that no Pleadings ſhould ever after be received in Court under the Hand

of ſuch Counſel. And in Caſe a Defendant obſtinately inſiſts on his Demurrer and refuſes to anſwer, where the Court is of Opinion that ſufficient Matter is alledged in the Bill to oblige him to anſwer and for the Court to proceed upon, the Court will decree the Matter of the Plaintiff's Bill; for by the Demurrer are confeſſed all Matters of Fact that are well alledged.

Demurrers will not be received 'till filed; and Demurrers are to be enter'd with the Regiſter in eight Days after the Filing, to be ſet down to be argued, or ſhall be over-ruled; alſo the Order for ſetting down is to be enter'd two Days before with the Regiſter, *&c.* In eight Days after a Demurrer put in, a Slip or Miſtake in the Bill may be amended by the Plaintiff, paying 20 *s.* Coſts to the Defendant's Clerk in Court: But if within eight Days after the Demurrer filed, the Demurrer be admitted to be good by the Plaintiff, and he pays 40 *s.* Coſts, the Defendant need not attend the Demurrer, or ſet it down to be argued; for the Bill ſtands diſmiſs'd of Courſe, without Motion, unleſs both Sides agree to the Amendment of the Bill; though ſuch Diſmiſſion ſhall not be a Bar to a new Bill to be exhibited by the Plaintiff.

After a Contempt duly proſecuted againſt the Defendant to an Attachment with Proclamations returned, no Demurrer or Plea ſhall be received but upon Motion in open Court, and Affidavit of the Cauſe of Delay, *&c.*

See more of *Pleas* and *Demurrers*, and how taken by *Commiſſion*, under *Anſwers*.

A De-

A Demurrer, Plea and Anſwer to a Bill.

The Demurrer, Plea and Anſwer of C. D. *Defendant, to the Bill of Complaint of* A. B. *Complainant.*

THE ſaid Defendant by Proteſtation not confeſſing or acknowledging, *&c.* ſaith, that the Scope of the Plaintiff's Bill being to be relieved, and have and receive from the Defendant the Sum of, *&c.* for the Arrears of, *&c.* *per Annum* Annuity, thereby pretended to be due unto him, by Grant and Conveyance from *T. B.* for and during, *&c.* which ſaid Annuity it is pretended was paid by the ſaid *T. B.* until, *&c.* when he the ſaid *T. B.* died, leaving his Eſtate about, *&c.* *per Annum*, ſettled upon Truſtees for Payment of his Debts, and all Annuities and Incumbrances created by him, and which by ſubſequent Deeds made between, *&c.* the Defendant is made liable to pay, *&c.* and the Complainant's Bill further alledging, that afterwards in the Year, *&c.* the Payment of the ſaid Annuity ceaſed, and that then there was due the Sum demanded by the Bill for Arrears, which the Complainant ſeeks to have, with Damages, *&c.* to ſo much of which ſaid Bill as is not herein after pleaded and anſwered unto, this Defendant doth demur in Law, and for Cauſe of Demurrer ſhews, that the ſaid Complainant ought to have ſought to recover by Law, and no other Courſe, inaſmuch as it doth not appear that the Conſideration for the ſaid Grant

was any other than natural Love and Affection, or Something elſe not valuable, which in no Caſe was ever aided by this Honourable Court; nor ought the Complainant to have any Anſwer or Diſcovery to that Part of his Bill which requires to know whether there was any ſuch Grant of the ſaid Annuity or other Security, *&c.* for Securing the Arrears thereof, as in the ſaid Bill is alledged, or what is become of the ſame, for that the ſaid Complainant hath not made the uſual Oath that there was any ſuch Grant, *&c.* and that he had not the ſame, nor knew what was become thereof, except the Defendant had the ſame, and annexed ſuch his Oath to the ſaid Bill, or filed the ſame in the Office for filing Affidavits of this Court, which is not done, *&c.* therefore this Defendant doth demur in Law, and demands the Judgment of this Honourable Court, whether he ſhall be compelled to give any Anſwer to that Part of the Complainant's ſaid Bill of Complaint, and to that Part of the ſaid Bill not herein before demurred and herein after anſwered unto, as ſeeks, *&c.* this Defendant pleads, and for Plea ſaith, that the ſaid *T. B.* having Power to charge his whole Eſtate with, *&c.* and to diſpoſe of, *&c.* did by Deed indented under his Hand and Seal bearing Date, *&c.* and made or mentioned to be made between, *&c.* declare among other Things that the ſaid, *&c.* ſhould be ſubject to the Payment of all his Debts in general, *&c.* whereof the Complainant's Debt (if there be any ſuch juſtly due) comes in with that Truſt, and doth not ariſe otherways, *&c.* and for further Plea ſaith, *&c.*

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all which Matters this Defendant avers to be true. And to the reſt of the ſaid Bill, this Defendant for Anſwer ſaith, *&c.* and denieth that he knows, believes, or ever heard that the ſaid, *&c.* did ever hold any of the Eſtate of the ſaid *T. B.* upon any particular Truſt to pay the Complainant's Annuity, *&c.* and this Defendant denies all Combination in the Bill charged, but confeſſeth, *&c. without that*, that, *&c.*

A Demurrer to a Bill in Chancery falſly exhibited.

The Demurrer of A. B. *Defendant, to the Bill of Complaint of* C. D.

THE Defendant by Proteſtation not acknowledging or confeſſing the Matters and Things in the Complainant's Bill contained to be true, in ſuch Manner as they are therein ſet forth, for Demurrer thereunto ſaith, that the Complainant's ſaid Bill by the Record thereof appeareth to be dated and filed on the Day of, *&c.* laſt paſt, and is directed to the Right Honourable *W.* Earl *C.* Lord High Chancellor of *Great Britain*, and the Complainant in and by the ſaid Bill doth pray, that this Defendant may ſtand to and abide ſuch Order and Decree in the Premiſſes as to his ſaid Lordſhip ſhall ſeem meet, for which Cauſe the Defendant doth demur in Law to the ſaid Bill, in Regard that at the Day and Time on which the ſaid Bill bears Date, and ſome Days before, the Right Honourable *T.* Lord *P.* was appointed Lord Chan-

cellor of *Great Britain*, and thereby the Power and Authority of the ſaid *W.* Earl *C.* as Lord High Chancellor, did ceaſe and determine, ſo that the Complainant's Bill as being directed to his ſaid Lordſhip, was filed and exhibited *coram non Judice*, and his Lordſhip had then no Power to hold Plea, or take any judicial Cogniſance of any Suit in this Honourable Court; and for which Cauſe, and other Defects appearing in the Bill, this Defendant humbly demands the Judgment of this Honourable Court, whether he ſhall make any Anſwer to the ſaid Bill, and prays to be diſmiſs'd with his reaſonable Coſts in this Behalf wrongfully ſuſtained.

A Demurrer to a Bill for Vexation and Scandal of the Defendant, *&c.*

The Demurrer of, &c. *Defendant, to the Bill of Complaint of*, &c. *Complainant.*

THE ſaid Defendant by Proteſtation, *&c.* and for Demurrer to the Complainant's Bill ſaith, that there appeareth no Manner of Equity charged in the ſaid Bill for ſuch Matters as the Complainant ſeeks Relief, but that the ſaid Bill is exhibited on Purpoſe to vex, perplex and charge this Defendant without any juſt Ground or Cauſe, for that he the ſaid Complainant may have and take his Action at Law againſt this Defendant for all and every the Matters and Things he complains of in and by his ſaid Bill of Complaint, and may thereupon recover what he pretends to be due to him upon any ſpecial Agreement

Agreement ſuggeſted to be made by this Defendant for Recompence for any of the Matters and Things by him ſet forth in his ſaid Bill; and this Defendant for further Demurrer to the ſaid Bill ſaith, That the Complainant's ſaid Bill is not only void of Equity as aforeſaid, but as this Defendant is adviſed, full of ſcandalous Charges and ſuggeſtions againſt the Defendant; as that this Defendant had committed, *&c.* whereas he this Defendant is altogether guiltleſs and innocent thereof, and was never, nor could, nor can be therewith charged; and alſo by charging the Defendant with deceiving him the Complainant of ſeveral Sums of Money, which (if any ſuch Thing were, as in Truth is not) this Defendant ſaith he hath a more legal Remedy to take againſt him this Defendant for the ſame, than by Bill in this Honourable Court; for which ſaid Cauſes, and divers other Errors and Imperfections in the ſaid Bill, this Defendant doth demur in Law, and demand the Judgment of this Court, whether he ſhall make any Anſwer, *&c.*

A Demurrer for not making Oath of the Loſs of a Bond, or ſetting forth Letters of Adminiſtration granted.

The Demurrer of E. B. *to the Bill of Complaint of* A. R.

THE ſaid Defendant for and by way of Demurrer, *&c.* ſaith, that the Complainant by her Bill, as this Defendant is adviſed, endeavours

deavours to entitle herſelf to a Sum of Money due upon a Bond pretended to be entered into by this Defendant, to *T. R.* her late Husband deceaſed, and ſuggeſts for Equity that the ſaid Bond was burnt in the Fire that happened in, *&c.* to which this Defendant demurreth, and for Cauſe of Demurrer ſaith, that the Complainant hath not by her ſaid Bill ſufficiently entitled her ſelf to the Money due upon the ſaid Bond, (in Caſe any ſuch Bond there ever was, which this Defendant doth in no Sort admit) for that the Complainant doth not by her Bill ſet forth that Letters of Adminiſtration of the Eſtate of the ſaid *T. R.* were granted unto her under the Seal of the Spiritual Court, and ſhe doth not proffer to produce the ſame ſo under Seal to this Honourable Court, nor refer her ſelf thereto; and for that the ſaid Complainant hath not made Affidavit that the ſaid Bond is burnt or loſt, to give Cogniſance in Equity, as by the Rules and conſtant Practice of this Court ſhe ought to have done: Wherefore, and for other Errors and Imperfections in the ſaid Bill appearing, this Defendant doth demur in Law thereunto, and humbly demands the Judgment of this Honourable Court, whether, *&c.*

A De-

A Demurrer to a Bill craving Leave to proceed at Law to recover the Penalty of a Judgment.

The Demurrer of, &c. to the Bill of, &c.

THE ſaid Defendant by Proteſtation not confeſſing, *&c.* for Demurrer thereunto ſaith, that it appears in and by the ſaid Bill of Complaint, that the Complainants heretofore in the Year, *&c.* exhibited a Bill into this Honourable Court againſt the Defendant and others, to diſcover whether a Statute entered into by *A. B.* unto *C. D.* and other Securities were ſatisfied, to the End the Complainants might be let in to have Satisfaction for a pretended Judgment, obtained by, *&c.* under whom the Complainants Claim of one Thouſand Pounds on a Bond for the Payment of Five hundred Pounds Principal Money, entered into by him the ſaid, *&c.* and, *&c.* for Coſts, which ſaid Judgment was ſubſequent to the ſaid Statute to the ſaid *C. D.* and the Cauſe being heard and referred to Account, the ſaid Statute and other precedent Incumbrances were found to be ſatisfied with an Overplus; and the ſaid Statute was thereupon ſet aſide as to the Complainants, and the Complainants were at Liberty to proceed, and have ſince proceeded at Law upon the ſaid Judgment, *&c.* whereby it appears of the Complainants own ſhewing, that the Complainants have had Relief, and the Equity of their Cauſe hath had all the Favour and Juſtice which could

could be expected from this Court, and have by the Aid of this Court had their plain and proper Remedy at Law to recover on the ſaid Judgment, and ought not to have any further Relief in a Caſe of this Nature; and for that the Complainants by their now Bill ſeek to have the Aid and Aſſiſtance of this Honourable Court, to recover and be paid Intereſt and Coſts beyond the Penalty of the Judgment, (the ſaid Penalty being 1000*l.* and, *&c.* Coſts, this Defendant having tendered at Common Law) which this Defendant is adviſed is not conſiſtent with, nor agreeable to the Rules of this Court, as a Court of Equity, to give Damages or Coſts beyond the Penalty of the Security; and therefore the Complainants ought not to have Aid or Relief of this Honourable Court therein: Wherefore, as it is againſt the antient Rules and Practice of this Court to extend or enlarge legal Securities beyond the Penalty of the ſame, or to give any further Relief after a Decree formerly had touching the ſame Matter, which may be the Occaſion of lawleſs Suits and Vexation; for theſe Cauſes, and divers other Errors, *&c.* in the ſaid Bill, *&c.* this Defendant doth demur thereunto, and humbly demands the Judgment of, *&c.* and prays to be diſmiſſed, *&c.*

A De-

A Demurrer to the Complainant's Bill to be relieved againſt a Releaſe.

The Demurrer of W. R. *and* G. R. *Defendants, to the Bill of Complaint of* L. T. *Complainant.*

THESE Defendants do demur to the Complainant's ſaid Bill, and for Cauſe of Demurrer ſay, that it appears of the Plaintiff's own ſhewing in and by his ſaid Bill of Complaint, that for the Sum of, *&c.* in Money, and, *&c.* in Goods, he was by Agreement to have of this Defendant *W. R.* the Sum of, *&c.* within Six Months after the Death of *A. R.* the ſaid Defendant's Father, which was ſecured by a Statute of, *&c.* Pounds, and that the Complainant hath received, *&c.* of the Defendant *W. R.* for the ſaid Debt, and releaſed and diſcharged the ſame by Deed in Writing under his Hand and Seal, bearing Date, *&c.* and yet ſeeks the Aid and Aſſiſtance of this Honourable Court to ſet aſide the ſaid Releaſe, that he may be enabled to recover, *&c.* upon Pretence that the ſaid Releaſe, tho' voluntarily and lawfully given to this Defendant, was obtained by Fraud and Circumvention; and theſe Defendants are adviſed, that the original Contract for lending a ſmall Sum to an Heir in the Life-time of his Father, and ſelling him an old Parcel of Goods, valued at, *&c.* which were not worth, *&c.* and for which the Complainant was to have three for one after the Death of the Defendant *W. R.*'s Father,

was in it ſelf a corrupt and fraudulent Bargain; and ſuch as this Honourable Court is ſo far from giving Aſſiſtance to, as that it always relieves againſt; and that this Court would have relieved the ſaid *W. R.* againſt the ſaid Statute on the Payment of the ſaid Sum of, *&c.* to the ſaid Complainant, and the juſt Value of the ſaid Goods; and alſo for that it appears of the Complainant's own ſhewing, that he hath received the Sum of, *&c.* for the ſaid Debt, which was more than was honeſtly and conſcionably due to him; therefore, and for that the Complainant's Bill contains not any Manner of Equity for this Court to ground any Decree, or give the Complainant any Aſſiſtance, as theſe Defendants are adviſed, they demur thereunto, and humbly demand Judgment, *&c.*

A Demurrer to a Bill for ſeveral Cauſes, as where it ſeeks Relief after a Leaſe expired, concerning Deeds of Truſt, *&c.*

The Demurrer of, &c. *to the Bill of Complaint of*, &c.

THE ſaid Defendant by Proteſtation not confeſſing or aknowledging, *&c.* ſaith, he is adviſed by his Counſel, that there is no Matter or Thing in the ſaid Bill of Complaint contained good and ſufficient in the Law, whereby to call this Defendant in Queſtion in this Honourable Court for the ſame, but there is good Cauſe of Demurrer thereto; for that it appears by the Complainant's own ſhewing in and by

his ſaid Bill, that the Scope and End thereof is for the Complainant to be relieved touching a Leaſe or Term of 21 Years, of and in a Meſſuage, *&c.* in the Bill mentioned, ſuppoſed to be demiſed by, *&c.* unto the ſaid, *&c.* for ſuch Term as aforeſaid; and to charge the Lands with, *&c.* and Intereſt, alledged to have been the Conſideration of, *&c.* to be anſwered out of the Lands and Profits thereof; and with a Truſt created by, *&c.* to which ſaid ſeveral Matters, this Defendant doth demur, and for Cauſe of Demurrer ſheweth, that it appears of the Complainant's own ſhewing, that the ſaid Term or Leaſe touching which he ſeeks Relief, expired in or about the Year, *&c.* and therefore as the ſaid Land was not nor is any Ways chargeable with or liable unto the Plaintiff's Demands, either in Law or Equity, after the Expiration of the ſaid Leaſe, nor is the Defendant, for ought appears by the Complainant's Bill, any Ways anſwerable or accountable in Equity for any Profits of the Premiſſes taken during the ſaid Term of 21 Years, *&c.* And foraſmuch as a Demand of this Nature, after ſo great a Length of Time as, *&c.* Years, ought not to be countenanced in this Honourable Court; and for that the Complainant ſeeks the Cuſtody of a Deed, by which he pretends Title to, *&c.* which if any ſuch Deed were, it did properly belong to, *&c.* and moſt probably is in his Cuſtody and Poſſeſſion, and not in the Defendant's, who appears by the Complainant's own ſhewing to be a Stranger thereunto, it being made to, *&c.* and ſo doth cauſeleſly vex and trouble this Defendant, as he hath done by a former

former Bill which was diſmiſſed by the Plaintiff himſelf touching this Leaſe; as alſo for that the Complainant ſeeketh by his ſaid Bill to be relieved concerning a Truſt created for his Benefit, and hath not made the Truſtees Parties to the ſaid Bill, but hath exhibited his ſaid Bill on Purpoſe to oppreſs this Defendant by this Suit, in which this Honourable Court cannot, as this Defendant is adviſed, make any Decree for Want of proper Parties, *&c.* This Defendant therefore, for all the ſaid Cauſes, and other Imperfections in the ſaid Bill of Complaint, doth demur and abide by the Judgment of this Honourable Court, whether, *&c.*

A Demurrer for that a Bill contains ſeveral diſtinct Matters againſt ſeveral Perſons.

The joint and ſeveral Demurrer of A. B. *and* C. D. *two of the Defendants, to the Bill of Complaint of* E. F. *Complainant.*

THESE Defendants by Proteſtation, *&c.* ſay, that they are adviſed by their Counſel, that the Complainant's ſaid Bill is inſufficient for theſe Defendants, or either of them, to be compelled to make or give any Anſwer thereto; and for Cauſe of Demurrer thereunto theſe Defendants ſay, that the ſaid Bill containeth in itſelf ſeveral and diſtinct Matters, againſt ſeveral and diſtinct Defendants, which have not any Relation or Reference the one to the other, whereby the ſaid Bill is drawn to a great and unneceſſary Length of above one Hundred Sheets of

of Paper; and theſe Defendants, altho' but very little concerned therein, are thereby enforced to take out a Copy of the ſaid whole Bill; and if theſe Defendants ſhould be obliged to make Anſwer thereunto, they muſt (if the Cauſe ſhall proceed to Iſſue) be put to unreaſonable and unneceſſary Charges and Expences in taking out Copies of all the Pleadings and Proofs which ſhall happen in this Cauſe, and which concern the other Defendants only, whereunto theſe Defendants are no ways pretended or ſuppoſed by the Bill to be concerned, which is againſt the conſtant Practice and Juſtice of this Court, and if admitted would prove to theſe Defendants an extraordinary Vexation; wherefore, and for divers other apparent Errors, Imperfections, and Incertainties in the ſaid Bill of Complaint contained, theſe Defendants do demur, and humbly demand, *&c.*

A Demurrer to a Bill ſeeking Aid of the Court to prove a Lunatick's Will.

The Demurrer of, &c. *to the Bill of Complaint of*, &c.

THIS Defendant by Proteſtation not confeſſing, *&c.* ſaith, that whereas the ſaid Bill ſeeks to have the Aid and Aſſiſtance of this Honourable Court, for the Examination of Witneſſes to prove a Paper Writing in the Bill ſet forth, pretended to be the Will of *T. M.* dated, *&c.* whereby ſeveral Meſſuages or Tenements and Lands in the Bill mentioned are pretended

to be deviſed to the Complainant, *&c.* in Tail, with a Remainder over to, *&c.* and to have further Relief in this Court, for that the ſaid *T. M.* ſince the making of the ſaid Will is become Lunatick, and was ſo found, and ſo continued, and that this Defendant was Heir at Law of the ſaid Eſtate to the ſaid *T. M. &c.* This Defendant doth demur thereto, and for Cauſe of Demurrer ſaith, that it appears by the Complainant's Bill that the ſaid *T.* M. is ſtill living, and tho' he be Lunatick, he may recover from his Lunacy, or have ſuch lucid Intervals as to revoke or deſtroy the ſaid pretended Writing, if ſuch there be, and for that during the Life of the ſaid *T. M.* the pretended Paper cannot be his Will; and 'till it be a perfect Will there cannot nor ought not to be any Examination of Witneſſes thereto, nor ought this Honourable Court to extend any Aſſiſtance in a Caſe of this Nature, touching the examining of Witneſſes to a ſuppoſed Will, in the Life-time of the Deviſor, or any Way aid the Proof of a pretended Will of a Lunatick; and the rather, for that it appears by the Bill, that the ſaid pretended Deviſor's Place of Abode, and the County where his Eſtate lieth, are miſtaken, ſo that it may be preſumed, if any ſuch Writing there be as is pretended, he was then under a Lunatical Diſtemper; and altho' this Defendant may be termed Heir preſumptive to the Lunatick, yet he may not be ſo at his Death; and if there ſhould be any Examination of Witneſſes allowed to prove the ſaid pretended Paper to be declared by the ſaid Lunatick for and as his Will, the ſame

cannot be uſed againſt this Defendant, if he ſurvives the ſaid Lunatick, as he is adviſed, for that ſuch Depoſitions were taken in the Life-time of the Deviſor, before any Title accrewed to this Defendant, whereof the Complainant being apprized hath pray'd further Relief, ſeeking to have the Directions of this Court for the Uſe of ſuch Depoſitions which ought not to be granted; nor will this Honourable Court, as the Defendant is adviſed, make Evidence which is not Evidence at Law: Wherefore, and for that the Plaintiff's Bill contains not any Equity or Ground for this Court to afford any Relief, and for many other Errors in the Bill appearing, and the ſame being not only of a very extraordinary Nature, but of dangerous Conſequence, this Defendant doth demur in Law to the ſaid Bill, and humbly demand the Judgment of, *&c.* whether he ſhall be compelled to anſwer, *&c.*

A Demurrer to a Bill of Review, and of Revivor.

THE Defendant by Proteſtation not confeſſing all or any of the Matters or Things in the ſaid Bill of Review contained, other than what is contained in the Decree upon Record, which the Bill ſeeks to reverſe, to be true, in ſuch Manner and Form as the ſame are thereby ſet forth and alledged; ſaith, that by the conſtant Rules of this Court, no Bill of Review ought to be admitted to alter or change Matters decreed, but only *either for Error in Law*

appearing in the Body of the Decree, as it is drawn up and enrolled, or for new Matter discovered ſince the Decree pronounc'd, and that by Leave of the Court on Affidavit made of the Truth of that Matter: And this Defendant doth inſiſt, that in the Body of the ſaid Decree, as the ſame is ſigned and enrolled, and of Record in this Honourable Court, there is not nor are any Error or Errors apparent in the ſame, whereby or by Reaſon whereof the ſaid Decree can or ought to be reviewed or reverſed; and for that the pretended Errors in the ſaid Bill of Review ſet forth, are not Errors in Law appearing in the ſaid Decree, but Allegations and Suggeſtions of Matters not contained in the ſaid Decree; and there is not any ſuch new Matter alledged, or Affidavit made, and Leave obtained for bringing ſuch Bill of Review as is warranted by this Honourable Court; and for that the Pretences of the Bill for decreeing, *&c.* are only Exceptions of Matters of Form, and not in Point of Right, and the pretended Error in, *&c.* in Caſe any ſuch there be, is amendable by Motion, *&c.* therefore this Defendant doth demur in Law to the ſaid Bill of Review, and humbly inſiſts upon it, that the ſaid Decree ought not for any of the Cauſes aſſigned by the Bill to be reviewed or reverſed, being for ought appears well grounded, and humbly demands the Judgment of this Honourable Court, *&c.*

For Demurrer theſe Defendants ſay, they are adviſed the ſaid Bill exhibited by the ſaid Complainant is ſuch, that they are not by the Juſtice of this Honourable Court requirable to anſwer

the

the ſame; for that the ſame appearing in it ſelf to be a *Bill of Revivor*, there is not any Proceſs prayed that the ſame, or any Part thereof ſhould be revived, ſo that it cannot for that Reaſon be revived, as theſe Defendants are adviſed; and for that in the ſaid Bill it is expreſſed, That as againſt one of the Defendants, *viz. &c.* the original Bill was diſmiſſed, and yet that alſo is prayed to be revived; and farther, for that the Complainant hath not well entitled himſelf, or ſet forth his Title to the Eſtate in Queſtion, *&c.* for which Cauſes, and for many other Defects and Imperfections in the Bill appearing, theſe Defendants do demur in Law thereunto, and humbly demand the Judgment of this Court, if thereto they ſhall be required to make any other Anſwer, *&c.*

A Demurrer to Part of a Replication, and Rejoinder to the Reſidue.

THE Defendant for Rejoinder to ſo much of the Complainant's Bill as is not herein after demurred unto, ſaith in all and every other Matter and Thing as in and by his ſaid Anſwer he hath already ſaid, and doth and will aver, juſtify, maintain and prove the ſame Anſwer, and all and every the Clauſes and Things therein contained, to be true, certain, and ſufficient in the Law to be replied unto, in ſuch Manner and Form as the ſame therein is ſet forth and declared; and as to ſo much of the ſaid Replication as concerneth or alledgeth any

Agreement to have been made between the Complainant and this Defendant, *&c.* this Defendant doth demur in Law thereto, for that the Matter is foreign to the Matters and Allegations of the Bill, the Bill being grounded only on, *&c.* without ſo much as one Word or Mention of the Agreement charged in the Replication, *&c.* ſo that the pretended Agreement mentioned by the Plaintiff in his Replication is different from the Agreement charged in the Bill; and therefore, and inaſmuch as the ſaid pretended Agreement mentioned in the Replication was, for ought appears, precedent to the Complainant's Bill, and in Caſe the ſaid Complainant would have any Avail or Benefit thereby, it ought to have been made Part of the Bill, that ſo this Defendant might, by Anſwer upon Oath, have made his Defence entire thereunto, and have ſet forth any Matter that he could in Avoidance thereof, as that the ſaid Agreement pretended by the Replication was but a Part of the Agreement that was really made between the Plaintiff and this Defendant, and not the whole Agreement, or that the ſame was waived or given up afterwards, or other Matters which he might have ſet forth by his ſaid Anſwer, that might with the Teſtimony of one Witneſs be a full Defence to the Matter objected; whereas if the Defendant ſhould be put to rejoin to that Matter, he might be deprived of ſuch Defence which he is adviſed he in Juſtice ought to have, and which by the Courſe of Equity ſhould be allowed this Defendant: Wherefore he, this Defendant,

fendant, doth demur to that Part of the Replication, as a Departure from the Bill and insufficient to be rejoined unto, and humbly demands the Judgment of this Honourable Court, whether the Complainant ought to be permitted in this Manner to draw the same under Examination, and humbly prays, *&c.*

If no Plea or Demurrer be put in to the Plaintiff's Bill, but an *Answer* only, or if a Demurrer or Plea is over-ruled, whereon the Defendant puts in his Answer, then the Plaintiff *replies*, and the Defendant *rejoins*, and the Cause proceeds to *Issue*.

Of Replications *and* Rejoinders *to Anſwers.*

A Replication is the Plaintiff's Anſwer to the Anſwer of the Defendant, averring or enforcing the Allegations in his Bill, and avoiding or denying the Matters contained in the Defendant's Anſwer: If the Defendant demurs to a Bill only before Anſwer, or anſwers and diſclaims, the Plaintiff cannot reply thereto.

Replications are either general or ſpecial; and a Replication muſt be general, except the Defendant by his Anſwer offers new Matter, which will not be brought into Iſſue by the Bill and Anſwer, or where he denies only one or ſome few Points of the Bill: But if upon the Anſwer, there be Ground ſufficient for a Decree, the Plaintiff ſhall go to Hearing without Replying or Examination of Witneſſes; as if the Complainant makes his Title by a Deed or Conveyance in the Defendant's Hands, and the Defendant by his Anſwer confeſſes it, *&c.* If upon the Defendant's Anſwer there be ſo much confeſſed, that the Plaintiff need not draw into Pleading and prove all the Points, he muſt ſee to it and reply; and proceed to Proof only in thoſe Particulars in Queſtion that are neceſſary to be proved, on Pain of Coſts. And in ſome Caſes it may be convenient for the Plaintiff to reply, *&c.* whereby the Defendant will be put upon Proof of his Anſwer, and the Plaintiff admitted to prove his Bill. Yet if the Plaintiff make

make a Replication to an Anſwer, and without the Defendant's Rejoinder or Rules given for Publication, brings the Cauſe to Hearing, the Anſwer ſhall be admitted wholly true, as if there had been no Replication; for the Defendant's Opportunity of Proving his Anſwer is taken from him. *Ord. Canc.* 122. *Chan. Caſ.* 121.

The Replication of the Plaintiff affirms and avers the Bill to be true; and it is to be ſhort, and muſt directly and pertinently purſue the Subſtance of the Bill, and confeſs and avoid, or traverſe or deny the Anſwer: It muſt by no Means be a Departure from the Bill, becauſe the Plaintiff muſt have his Decree *ſecundum formam Petitionis*; and it ſhall contain no new Matter, unleſs it be to avoid new Matter, ſet forth in the Defendant's Anſwer. A Plaintiff having put Matters in his Replication which were not contained in the Bill, and which the Plaintiff knew of at the Exhibiting the Bill; the Defendant pleaded and demurred to the Replication, which the Court allowed of. 1 *Chanc. Rep.* 259.

All the Term the Anſwer comes in is allow'd the Plaintiff to reply; and by the antient Practice, the Defendant might in any following Term give the Plaintiff a Rule to reply within eight Days after, wherein, if he failed, the Bill might be diſmiſſed with Coſts without Motion; and if no Rule were given, then if the Replication came not in before the End of the ſecond Term, after the Term that the Anſwer came in, upon Certificate thereof from the Six Clerk, the Bill might have been diſmiſſed with Coſts: But ſince the late Act of Parliament, whereby full

full Coſts are to be paid upon Diſmiſſion, the Plaintiff hath Time till the End of the third Term; and this is now the Practice of the Court. If a Replication is made before the Rule is out, or any Order for a Diſmiſſion pronounced, tho' it be after the End of the third Term, the Bill ſhall not be diſmiſſed: Alſo if there be a Diſmiſſion for Want of a Replication, *&c.* yet the Court does uſually admit the Bill to be retained upon Payment of Coſts. Where a Replication is put in, and the Plaintiff ceaſes all Kind of Proſecution upon it for a Year, the Bill may upon Certificate and Motion be diſmiſſed.

Rules for Replication are to be given, *i. e.* enter'd in the Houſe-Book kept in the Office, eight Days at leaſt before the End of the Term, excluſive of the laſt Day; and all other Rules, as well as this, muſt be entered in Term. In Caſe the Parties live in Town, or there be not many Witneſſes to examine, either Side may move that the other may reply or rejoin *gratis*, voluntarily, without Compulſion of Proceſs, and examine Witneſſes, fix a Time for Publication to paſs, and hear the Cauſe: And if the Plaintiff hath replied, the Defendant may, if he will, rejoin *gratis*; without any Motion for that Purpoſe.

A Replication is to be firſt entered with and filed by the Plaintiff's Six Clerk in the Cauſe, according to the Courſe of the Court, before the Iſſuing out of the *Subpœna ad Rejungendum*, 'till which no Fruit ſhall be taken of that Writ, or at leaſt before the Return thereof; and if the Parties

Parties, upon whom any *Subpœna* to rejoin is ſerved, find no Replication filed, they ſhall have the ordinary Coſts, *&c.*

After the Replication comes the *Rejoinder*, which is the Allegation or Plea of the Defendant made to the Plaintiff's Replication, whereby he endeavours to weaken the ſame, and to ſtrengthen his Anſwer to the Complainant's Bill: So that the Rejoinder muſt always purſue and confirm the Anſwer, and ſufficiently avoid or traverſe every material Point of the Replication.

The Plaintiff intending to go to Commiſſion to examine Witneſſes, muſt ſerve the Defendant with a *Subpœna ad Rejungendum* before he can have his Commiſſion; and on the Return of this Writ, and Oath made of its Service, the Plaintiff by entring Rules, as before is ſhewn, may force the Defendant to rejoin or join in Commiſſion, or may proceed to examine Witneſſes without him; for having given him eight Days Time to rejoin, if within that Time he doth not, he cannot do it afterwards. The Defendant having appeared upon the *Subpœna* to rejoin, or after the Return and Affidavit of Service, and after the Rule to rejoin is out, without any Rejoinder put in, he ſhall not be afterwards admitted to rejoin; but the Plaintiff is to proceed to the Examination of Witneſſes.

And where the Defendant is ſerved with a *Subpœna* to rejoin, and Affidavit thereof made, if he does not, upon the Plaintiff's Clerk's Demand of his the Defendant's Clerk, deliver Commiſſioners Names by the End of the Term wherein this *Subpœna* is returnable, in ſuch Caſe the

the Plaintiff may give Names and take a Commiſſion *ex parte*. But if a *Subpœn. ad Rejungend.* be taken out againſt three Defendants, and two only are ſerved, if the Plaintiff proceed to examine Witneſſes, the Party not ſerved ſhall not be concluded by thoſe Examinations.

A *Surrejoinder* is a ſecond Defence of the Plaintiff's Bill, made in Anſwer to the Defendant's Rejoinder, and it is uſed only when by Reaſon of ſome new Matter diſcloſed in the Rejoinder, the Parties cannot come to iſſue without an Anſwer thereto. And thereunto the Defendant may put in a *Rebutter* or Ad-ſurrejoinder, if there be Cauſe, which is an Anſwer to the Plaintiff's Surrejoinder. But a Cauſe ſeldom proceeds to Surrejoinder, *&c.*

A general Replication to an Anſwer in Chancery.

The Replication of B. A. *Complainant, to the Anſwer of* D. E. *Defendant, put in to the ſaid Repliant's Bill of Complaint.*

THE ſaid Repliant ſaying and reſerving to himſelf now, and at all Times hereafter, all and all Manner of Advantage of Exception to the Incertainties and Inſufficiencies of the ſaid Defendant's Anſwer, for Replication thereunto ſaith, That all and ſingular the Matters and Things in the Repliant's ſaid Bill of Complaint are true, as the ſame are therein alledged, and that the Anſwer of the ſaid Defendant to the ſaid Bill is untrue, imperfect and inſufficient to be

be replied unto; and this Repliant is ready to aver, maintain, and prove the ſame, as this Honourable Court ſhall Award, and humbly prays, as in and by his ſaid Bill he hath already prayed. *Or it may be thus:* For Replication ſaith, in all and every the Matters and Things, as in and by his ſaid Bill of Complaint he hath already ſaid, and will aver, juſtify, maintain, and prove his ſaid Bill to be good, certain and ſufficient in the Law to be anſwered unto, *&c.* And this Repliant for farther Replication ſaith, That the Matters contained in the ſaid Bill of Complaint are altogether relievable in this Honourable Court, *&c.* *Without that*, that any other Matter or Thing, in the ſaid Defendant's Anſwer contained, material or effectual in the Law to be replied unto, and not herein and hereby well and ſufficiently replied unto, confeſſed or avoided, traverſed or denied, is true; all which Matters and Things this Repliant is ready to aver and prove, *&c.*

A Replication to ſeveral Anſwers.

THE ſaid Repliant ſaving to himſelf all Advantages of Exception, *&c.* For Replication to the Defendant's Anſwers ſaith, That all and every the Matters and Things in the Repliant's ſaid Bill are true and ſufficient in the Law to be anſwered unto, in ſuch Manner as therein ſet forth and alledged, and that the Anſwers of the ſaid Defendants, and every of them, in all the material Points and Allegations thereof, touching or concerning this Repliant, are very

very untrue and inſufficient to be replied unto; *without that*, that any other Matter or Thing in the ſaid Anſwers of the ſaid Defendants, or any of them contained, material or effectual in the Law for this Repliant to reply unto, and herein not well and ſufficiently replied unto, *&c.* All and every which ſaid Matters and Things this Repliant is ready to aver, juſtify, maintain and prove, as this Honourable Court ſhall award, and humbly prays, as in and by his ſaid Bill, *&c.*

A Special Replication to the Defendant's Anſwer.

The Replication of R. W. *Gent. Complainant, to the Anſwer of* M. P. *Eſq; Defendant.*

THE ſaid Repliant, ſaving, *&c.* for Replication ſaith, That his Bill of Complaint exhibited in this Honourable Court againſt the Defendant, and all and every the Matters and Things therein contained, is and are true and ſufficient in the Law to be anſwered unto, and not deviſed or contrived out of Malice to the ſaid Defendant, with Intent to vex or moleſt him, as in the ſaid Anſwer is ſet forth; and as to any Sum or Sums of Money due or owing by this Repliant to the ſaid Defendant, the Repliant ſaving and reſerving all Benefit and Advantage of Exception further ſaith, That he, this Repliant, doth not owe or is indebted to the Defendant in any Sum or Sums of Money whatſoever, and humbly conceives and is adviſed, That if the Allegations of the Defendant in his Anſwer were true, the ſame ought not to preclude this

this Repliant from being relieved in this Court, according to the Prayer of his, this Repliant's Bill; and this Repliant doth aver, and is ready to maintain and prove, that, *&c.* did at ſeveral Times imbezil and convey away from this Repliant ſeveral Sums of Money and divers Parcels of Goods, *&c.* (purſuing the Subſtance of the Bill) as in and by the ſaid Bill of Complaint is moſt truly alledged; *without that*, that, *&c.* All which ſaid Matters, *&c.*

A Rejoinder of the Defendant to the Plaintiff's Replication.

The Rejoinder of, &c. *Defendant, to the Replication of*, &c. *Complainant.*

THE ſaid Defendant now and at all Times hereafter, ſaving and reſerving to himſelf all Manner of Benefit and Advantage of Exception to the Incertainty and Inſufficiency of the ſaid Replication ſaith, That the Defendant's ſaid Anſwer is true, certain and ſufficient in the Law to be replied unto, and doth and will aver and maintain all and every Thing and Things therein to be true and certain, in ſuch Manner and Form as they and every of them are therein alledged and expreſſed; and this Defendant further ſaith, That the ſaid Replication of the ſaid Complainant is very uncertain, untrue and inſufficient in the Law to be rejoined unto by this Defendant, for divers Defects and Imperfections therein contained, and that the ſame is contrived and made, to the End to give ſome feigned Colour

lour for maintaining the ſaid Complainant's Bill in this Court, to the unjuſt Vexation of this Defendant, as may appear, for that the Complainant, by the ill Practices and ſiniſter Deſigns of, *&c.* who promoteth and ſoliciteth the ſaid Suit for the ſaid Complainant againſt this Defendant, did, contrary to all Law, Reaſon, Equity and good Conſcience, procure this Defendant, being but a poor and illiterate Man, to become bounden by Obligation to the ſaid, *&c.* in the ſaid Replication mentioned, for the Proceedings in the Suit of this Defendant, and with ſuch Condition whereof this Defendant is utterly ignorant, the ſame having never been read to him, *&c.* of all which ſaid ill Practices and Deſigns, this Defendant hopes this Honourable Court will take due Cogniſance, and diſcountenance and puniſh the ſame: And *without that*, that any other Matter or Thing, in the ſaid Replication contained, material or effectual in the Law to be rejoined unto by this Defendant, and not herein and hereby well and ſufficiently rejoined unto, confeſſed and avoided, traverſed or denied, is true; all which Matters this Defendant is ready to aver and prove, as this Honourable Court ſhall award, and therefore prayeth as he before in his ſaid Anſwer hath prayed.

Or thus: The ſaid Defendant rejoineth, and ſaith in all and every Thing and Things as in and by his ſaid Anſwer he hath already ſaid, and doth and will aver, juſtify, maintain and prove the ſaid Anſwer and all and every Thing, Articles, Clauſes and Allegations therein, to be good, true, certain and ſufficient in the Law to

be replied unto, in ſuch Sort, Manner and Form as the ſame are in the ſaid Anſwer already ſet forth and declared, *&c.* and that, *&c. without that*, that, *&c.*

A Bill and Anſwer, Replication, Rejoinder, &c. *in a Cauſe.*

To the Right Honourable, *&c.*

Bill. HUmbly complaining ſheweth, *&c.* your Orator *A. B.* that whereas *C. D.* of, *&c.* was indebted unto one *E. F.* in the Sum of 200 *l.* and your Orator at the ſpecial Inſtance and Requeſt of the ſaid *C. D.* about, *&c.* Years laſt paſt did become bound for the ſaid *C. D.* unto the ſaid *E. F.* by his Deed or Writing obligatory in the Sum of 400 *l.* with Condition therein contained for the Payment of the ſaid Sum of 200 *l.* unto the ſaid *E. F.* on the Day, *&c.* in the Year, *&c.* as by the ſaid Writing obligatory it doth and may appear; which ſaid Sum of 200 *l.* your Orator had got in Readineſs, and purpos'd to pay the ſame at the Time and Place aforeſaid, according to the Condition of the ſaid Writing obligatory; whereupon the ſaid *E. F.* ſome few Days, *viz.* about five or ſix Days before the Day appointed for the Payment of the ſaid Money, came unto your Orator, and upon Converſation had between your ſaid Orator and the ſaid *E. F.* touching the Payment of the ſaid Money, the ſaid *E. F.* declared he was contented, and did then agree to forbear the Payment thereof until, *&c.* then next following,

and alſo faithfully promiſed to your Orator, both then and divers Times afterwards, that he would forbear the Demand thereof, or any Proſecution for the ſame, until the ſaid, *&c.* and that he would not take any Advantage of the Forfeiture of the ſaid Bond againſt your ſaid Orator, but would cancel the ſaid Bond, and take a new Bond for the Payment thereof at the Feaſt of, *&c.* as aforeſaid, though he never required any new Bond from your ſaid Orator; and your Orator giving entire Credit to the Promiſes and Declarations ſo made by the ſaid *E. F.* did not pay the ſaid Sum of 200*l.* according to the Condition of the ſaid Writing obligatory, at the Time therein mentioned; after which the ſaid *E. F.* likewiſe often promiſed to your Orator to deliver the ſaid Bond to your ſaid Orator to be cancelled, and to take a new Bond for Payment of the ſaid Sum of 200*l.* on, *&c.* according to his ſaid Promiſes; but your Orator doubting the ſaid *E. F.* meant to delay him from Time to Time in Delivering up of the ſaid Bond, and fearing leaſt the ſaid *E. F.* ſhould take Advantage of the Forfeiture of the ſaid Bond againſt him, did on, *&c.* laſt, demand the ſaid Bond again of the ſaid *E. F.* in Order to give him a new Bond as aforeſaid, who then told your Orator that he had deliver'd over the ſaid Bond unto one *G. H.* of, *&c.* to whom he had aſſigned the ſaid Bond, but would uſe his Endeavours with the ſaid *G. H.* for Delivery of the ſame to your Orator, and pretended to take divers Journeys into the Country to the ſaid *G. H.* to fetch the ſame, and ſo from Time to Time delay'd

your Orator, and put him off with fair Words and Pretences, until ſuch Time as your ſaid Orator was upon Occaſion of Buſineſs enforc'd to ride out of *London* into the County of, *&c.* and ſhortly after your Orator purpoſing to get the ſame Bond out of the Hands of the ſaid *E. F.* and *G. H.* did in, *&c.* Term, ſend *J. K.* his Servant to, *&c.* with the ſaid Money, to make Payment thereof unto the ſaid *E. F.* and *G. H.* and to receive the ſaid Bond; who coming to the ſaid Place accordingly, and declaring unto them that he was come to make Payment of the aforeſaid Sum of 200 *l.* and receive the ſaid Bond, the ſaid *G. H.* told the ſaid *J. K.* that the ſaid Bond was not then in his Cuſtody; but he the ſaid *G. H.* did at that Time promiſe that if the ſaid *J. K.* would deliver over a Bond which he had in his Keeping, in Truſt to the Uſe of the ſaid *E. F.* that then the ſaid *G. H.* and *E. F.* would the next Day receive the ſaid Money, and deliver over the ſaid Bond to him, upon whoſe Promiſe the ſaid *J. K.* did then preſently deliver the ſaid Bond which he had to the Uſe of the ſaid *E. F.* to the ſaid *E. F.* or *G. H.* accordingly: *But ſo it is*, that the ſaid *E. F.* and *G. H.* nothing regarding their ſeveral Promiſes made to and with your Orator, and the ſaid *J. K.* as aforeſaid, have not only hitherto refuſed and denied to deliver over the ſaid Bond unto your Orator, according to the Agreement and Promiſes aforeſaid, but ſtill do utterly refuſe to do the ſame, altho' your Orator hath divers Times both before and ſince the ſaid Feaſt of, *&c.* offer'd to make Payment of

the ſaid Sum of 200 *l.* unto the ſaid *E. F.* and *G. H.* purſuant to the aforeſaid Agreement, and yet is ready and willing to pay the ſame; and the ſaid *E. F.* and *G. H.* intending to charge your ſaid Orator with the whole Penalty and Forfeiture of the ſaid Bond, have or one of them hath of late, contrary to their ſaid Promiſes and Agreements, commenced a Suit at Law againſt your ſaid Orator upon the ſaid Bond, to his great Loſs, Prejudice and Hindrance; and the ſaid *E. F.* hath alſo abſolutely denied that he ever promiſed to forbear the Payment of the ſaid 200 *l.* until, *&c.* contrary to Truth, Equity, and good Conſcience: *In tender Conſideration whereof*, and foraſmuch as your Orator is remedileſs in the Premiſſes by the ſtrict Rules of the Common Law, for that your Orator cannot plead the Promiſe and Agreement of the ſaid *E. F.* made to your Orator for Forbearance of the Money as aforeſaid, in Bar of the ſaid Bond, nor can have or bring any Action at Law againſt the ſaid *E. F.* and *G. H.* upon their ſaid Promiſes, *&c.* becauſe your Orator cannot make ſuch ſufficient Proof thereof as by the Common Law is in ſuch Caſe required; for the ſame were made privately between themſelves and no Witneſſes called thereto; or for that your Orator's Witneſſes which could prove the Premiſſes are abſent beyond the Seas, *&c.* *And to the End* that the ſaid *E. F.* and *G. H.* may in this Honourable Court upon their corporal Oaths, true, full and perfect Anſwer make to all and ſingular the Premiſſes, as if the ſame had been herein repeated and interrogated; and that they may parti-

particularly ſet forth and diſcover whether, *&c.* (reciting by Way of Interrogatory the *Bond*, *Promiſes* and *Agreement*, and all the Particulars aforeſaid,) and that your Orator may be relieved in all and ſingular the Premiſſes; *May it pleaſe* your Lordſhip to grant to your Orator his Majeſty's Writ of *Subpœna*, *&c.*

The Anſwer of E.F. *and* G.H. *Defendants, to the Bill of Complaint of* A.B. *Complainant.*

Anſwer. THE Defendants ſaving and reſerving to themſelves all Benefit and Advantage of Exception to the Incertainties, Inſufficiencies and Imperfections of the Complainant's ſaid Bill of Complaint, for Anſwer thereunto, or unto ſo much thereof as theſe Defendants are adviſed is material or neceſſary for them, or either of them, to make Anſwer unto, they and either of them anſwer and ſay, and firſt the ſaid *E.F.* ſaith, That true it is that the Complainant did become bound to this Defendant by his Bond or Obligation in the Sum of 400 *l.* with Condition for the Payment of 200 *l.* at a Day long ſince paſt, the which Sum this Defendant did expect to have received accordingly, and for that Purpoſe did at the Day appointed repair unto the Place ſpecified in the Condition of the ſaid Obligation, where the Money ſhould have been paid, and there did attend in Expectation to have received the ſame, but the ſaid Complainant not intending to ſatisfy the ſaid Debt, left the ſame unpaid, to the great Loſs, Hindrance and Diſcredit of

this Defendant; and this Defendant further ſaith, that he hath oftentimes ſince the ſaid Money became due, made Application to, and deſired the Complainant to pay and ſatisfy the ſaid Debt, who from Time to Time with fair Promiſes hath for near two Years laſt paſt delay'd this Defendant, to a greater Prejudice than the ſaid Sum amounted to, by diſappointing him therein, on which he this Defendant had depended in his Buſineſs to anſwer his Engagements with others; by Reaſon whereof, and foraſmuch as the Complainant hath ſought divers indirect Ways and Means to get the ſaid Obligation out of the Hands of this Defendant, with Intent never to pay the Debt aforeſaid, or any Part thereof, this Defendant hath cauſed the ſaid Obligation to be put in Suit, as it is lawful for him to do; and he this Defendant doth deny that the Complainant to the Knowledge of this Defendant did prepare in a Readineſs to have paid the ſaid Sum of 200*l.* at the Time and Place according to the Condition of the ſaid Obligation; or that this Defendant ſome few Days before the Day of Payment, or at any Time elſe, did come to the Complainant, or had any Converſation with him, or did declare that he was contented and did agree to forbear the Payment of the ſaid Money until, *&c.* and would not take any Advantage of the Forfeiture of the ſaid Bond, but would cancel the ſame, and accept of a new Bond for Payment thereof, as in the ſaid Bill is falſly alledged; and this Defendant doth deny that the Complainant, to the Knowledge of this Defendant, did

did ſend *J. K.* his Servant to, *&c.* with the ſaid Money, to make Payment thereof as in the ſaid Bill is alledged; for this Defendant ſaith, that he ſought often to the Complainant and made Application to him, that he this Defendant might be paid his ſaid Debt either in Money or ſome other Way, who made this Defendant many Promiſes to do the ſame with Speed, but never meant or intended it for any Thing this Defendant could find or obſerve: And the ſaid *G. H.* the other of theſe Defendants for himſelf ſaith, that whereas he is charged to have promiſed the ſaid *J. K.* Servant to the Complainant, that if he would deliver up a Bond which he had in his Keeping, in Truſt to the Uſe of the ſaid *E. F.* that then he this Defendant and the ſaid *E. F.* would the next Day following receive the ſaid Sum of 200 *l.* and deliver over the ſaid Bond of, *&c.* he this Defendant ſaith, that he never made any ſuch Promiſe to the ſaid *J. K.* to his Remembrance, neither was there any Cauſe at all ſo to do, as well becauſe the Truth is, that the ſaid *J. K.* ought to make Delivery of the Bond committed to him in Truſt, without any ſuch Promiſe, as alſo for that this Defendant was informed that the ſaid *J. K.* had deliver'd the ſaid Bond before that they met together to talk of the ſaid Debt; and this Defendant further ſaith, that although it were true that he had made ſuch Promiſe as aforeſaid, yet it were nothing at all material for the Relief of the Complainant, as well for Cauſe aforeſaid, as for that the Defendant had of himſelf no Power to do either Good or Hurt

in the Matter; *without that*, that any other Matter or Thing in the Complainant's ſaid Bill contained, *&c.*

The Replication of A. B. *Complainant, to the Anſwer of* E. F. *and* G. H. *Defendants.*

Replication. THE ſaid Repliant ſaving to himſelf all Benefit and Advantage of Exception to the Incertainties and Inſufficiencies of the ſaid Defendant's Anſwer, *&c.* for Replication thereunto ſaith, that he doth and will aver, juſtify, maintain and prove all and every the Matters and Things in his Bill of Complaint contained, to be good, juſt and true, in ſuch Manner as in the ſaid Bill of Complaint they are already ſet forth and declared; and further ſaith, that he doth and will aver and prove, as this Court ſhall award, that he this Repliant did prepare in a Readineſs, and purpoſed to pay the aforeſaid Sum of 200 *l.* in the ſaid Bill and Anſwer mentioned, at the Time and Place in the Condition of the ſaid Obligation ſpecified, according to the true Intent and Meaning of the Condition of the ſaid Obligation, in ſuch Manner and Form as in the ſaid Bill is alledged; and that ſome few Days before the Day of Payment thereof, the ſaid Defendant *E. F.* did come to the ſaid Repliant and agree to forbear the Demand thereof until, *&c.* then next following, in ſuch Manner as in the ſaid Bill is alledged and ſet forth; and that he would cancel the ſaid Bond, and take a new Bond for Payment thereof at, *&c.* aforeſaid; and that the ſaid Repliant relying

relying upon ſuch Agreement and Promiſe of the ſaid *E. F.* for forbearing of the ſaid Sum of, *&c.* until the ſaid, *&c.* and for the taking of a new Bond for Payment thereof at, *&c.* did not pay the ſame according to the Condition of the aforeſaid Obligation, which otherwiſe he would have done, in ſuch Manner and Form as in the ſaid Bill of Complaint is truly ſet forth and declared; and alſo ſaith, that on, *&c.* laſt he ſent the ſaid *J. K.* with the Money to make Payment thereof, and that the other Defendant *G. H.* upon Offer of Tender of the aforeſaid Sum by the ſaid *J. K.* did promiſe to deliver the ſaid Bond unto him within a ſhort Time after, ſo as the ſaid *K.* would deliver over a Bond which he had in his Keeping to the Uſe of the ſaid *E. F. &c.* which Bond was delivered over accordingly to the ſaid *E. F.* or *G. H.* by the ſaid *J. K.* and the ſaid *K.* was ready to tender and pay the ſaid Money according to the ſaid Agreement, as in the ſaid Bill is truly alledged; but this Repliant denies, that the Defendant *E. F.* ſought often to this Repliant, or requeſted him, to have the ſaid Debt ſatisfied in Money, or ſome other Way, or that he this Repliant made him any fair Promiſes to do the ſame, but never meant or intended it; for this Repliant ſays, that he did at ſundry Times before the ſaid Day, *&c.* and divers Times ſince, offer to make Payment of the ſaid Sum of, *&c.* unto the ſaid *E. F.* and *G. H.* and always was and yet is ready, upon Delivery of the aforeſaid Bond, to pay the ſame, in ſuch Manner as in the ſaid Bill is alledged, *&c.* and *without that*, that any other Matter,

Cauſe

Cauſe or Thing in the ſaid Defendant's Anſwer, *&c.*

The Rejoinder of E. F. *and* G. H. *Defendants, to the Replication of* A. B. *Complainant.*

Rejoinder. THE ſaid Defendants ſay, and each of them for himſelf ſeverally ſaith, that the Replication of the ſaid Complainant is unjuſt and untrue, and very inſufficient in the Law to be by theſe Defendants or either of them rejoined unto; nevertheleſs, all Advantages of Exception to the Incertainty and Inſufficiency thereof, to theſe Defendants, and to either of them, at all Times hereafter being ſaved, for Rejoinder unto the ſaid Replication, theſe Defendants and either of them for himſelf ſaith, in all and every Matters and Things, as they and either of them in their Anſwer have already ſaid, and do and will aver, maintain and prove the ſaid Anſwer, *&c.* and that, *&c. without that*, that any other Matter or Thing in the ſaid Replication, *&c.*



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